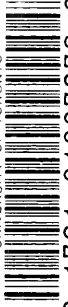


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THE DIPLOMACY OF THE WAR  
OF 1812

## THE ALBERT SHAW LECTURES ON DIPLOMATIC HISTORY

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By the liberality of Albert Shaw, Ph.D., of New York City, the Johns Hopkins University has been enabled to provide an annual course of lectures on Diplomatic History. The courses are included in the regular work of the Department of History and are published under the direction of Professor John H. Latané.



THE ALBERT SHAW LECTURES ON  
DIPLOMATIC HISTORY, 1914

//THE DIPLOMACY OF THE WAR  
OF 1812 //

BY

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TEACHER AND FRIEND

STRONG, FEARLESS, SINGLE-MINDED, LARGE-SOULED, WHOSE DEVOTION TO DEMOCRATIC IDEALS HAS INSPIRED THE LIVES OF THOUSANDS TO HIGH INTELLECTUAL AND MORAL ENDEAVOR



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## PREFACE

The study of American diplomatic history contained in these lectures is confined, in the main, to the relations between the United States and Great Britain covering the period of the War of 1812, with special reference to the negotiations resulting in the Treaty of Ghent. A more general consideration is also given to the diplomacy of the two countries with reference to the questions entering into the causes of the war; and, also, to the negotiations subsequent to the Treaty of Ghent which had to do with the execution of the treaty itself and with the controverted questions omitted from the treaty.

In addition to the important printed sources, such as American State Papers, Annals of Congress, British and Foreign State Papers, Parliamentary Debates, Parliamentary Papers, Niles' Register, Cobbett's Parliamentary History, Historical Register, Wellington's Supplementary Despatches, Correspondence of Viscount Castlereagh, and the Writings of Jefferson, Madison, Monroe, and Gallatin, the writer has had access to the diplomatic despatches and instructions of this period in the State Department at Washington and in the Foreign Office in London. The manuscript

letters of Jefferson, Monroe, Adams, and Crawford in the manuscript division of the Library of Congress and the unpublished papers and correspondence of Jonathan Russell in the Wheaton collection of the John Hay Library of Brown University, have thrown important light upon the diplomacy of this period.

I wish to acknowledge my indebtedness for assistance in securing material to Professor George Grafton Wilson of Harvard University, Dr. J. Franklin Jameson of the Carnegie Bureau of Historical Research, Mr. Worthington C. Ford, Editor of the Massachusetts Historical Society, Mr. Gaillard Hunt, Chief of the Manuscript Division of the Library of Congress, Dr. Charles O. Paullin of the Carnegie Bureau of Historical Research, Mr. Hubert Hall of the Public Record Office, London, and Mr. John R. Buck, Chief of the Bureau of Indexes and Archives, Department of State. I am also greatly indebted to Miss Fannie Roseman, of Washington, D. C., for assistance in proof-reading, and to Miss Mabel Reese of Baltimore for her work in seeing the book through the press.

FRANK A. UPDYKE.



## CHAPTER I

### IMPRESSMENT

The fundamental cause of the War of 1812 was the irreconcilable conflict of the British navigation acts with the commercial development of the United States. The more concrete causes, all of which were connected with the British naval and commercial policy, were the right of search for deserters on neutral vessels and the impressment of American seamen upon the high seas, restrictions upon American trade through the revival by Great Britain of the "Rule of 1756," and the promulgation of orders which established the principles of blockade against neutral commerce where, in fact, no legal blockade existed.

The treaty of peace of 1783 failed to bring about an amicable relationship between Great Britain and the United States. John Adams, the first American minister to Great Britain, wrote to the American Secretary of Foreign Affairs a few weeks after his arrival in London, as follows: "The popular pulse seems to beat high against America. The people are deceived by numberless falsehoods industriously circulated by the gazettes and in conversation, so that

there is too much reason to believe that, if this nation had another hundred million to spend, they would soon force the ministry into a war against us. . . . Their present system, as far as I can penetrate it, is to maintain a determined peace with all Europe, in order that they may war singly against America, if they should think it necessary.”<sup>1</sup> In another letter written August 6, 1785, Adams said: “Britain has ventured to begin commercial hostilities. I call them hostilities, because their direct object is not so much the increase of their own wealth, ships, or sailors, as the diminution of ours. A jealousy of our naval power is the true motive, the real passion which actuates them; they consider the United States as their rival, and the most dangerous rival they have in the world.”<sup>2</sup> Later, on October 15, Adams wrote: “I have the honor to agree fully with you in your opinion, that ‘it is manifestly as much the interest of this country to be well with us, as for us to be well with them;’ but this is not the judgment of the English nation; it is not the judgment of Lord North and his party; it is not the judgment of the Duke of Portland and his friends; and it does not appear to be the judgment of Mr. Pitt and the present set. In short, it does not at present appear to be the sentiment of

<sup>1</sup> Adams to Jay, July 19, 1785; Works of John Adams, VIII., 282.

<sup>2</sup> Adams to Jay, Aug. 6, 1785; Works of John Adams, VIII., 290-291.

anybody ; and, I am much inclined to believe, they will try the issue of importance with us.”<sup>3</sup> In Adams’s last two letters to the Secretary of State, one in November and the other in December, 1787, we find the following passages: “If they can bind Holland in their shackles, and France, by her internal distractions, is unable to interfere, she [Great Britain] will make war immediately against us.” “No answer is made to any of my memorials or letters to the ministry, nor do I expect that any thing will be done while I stay.”<sup>4</sup>

Great Britain failing to send a minister to the United States, Adams, at his own request, was recalled in February, 1788. It was not until 1792 that his post was filled. Thomas Pinckney was then appointed minister to Great Britain, a position which he retained only two years. The causes of friction between Great Britain and the United States steadily grew in volume during the next two decades, culminating at last in the War of 1812. The most aggravating and the most persistent of these causes was impressment. For twenty years it was the object of serious diplomatic negotiations.

As early as 1792 we find Thomas Jefferson, Secretary of State, advising Thomas Pinckney, American

<sup>3</sup> Adams to Jay, Oct. 15, 1785; Works of John Adams, VIII., 320.

<sup>4</sup> Adams to Jay, Nov. 30, 1787; Works of John Adams, VIII., 463. Adams to Jay, Dec. 16, 1787; Works of John Adams, VIII., 467-468.

minister at London, to confer with the British Foreign Secretary in order to make some satisfactory arrangement upon the subject of impressment. The British Government had proposed that American seamen should be required always to carry about with them a certificate of citizenship. Jefferson was opposed to this requirement as it would be impracticable always to carry such certificates. He upheld the position that the vessel outside of foreign jurisdiction protected the men on board, yet, in order to prevent a vessel from becoming an asylum for fugitives, he was willing that the number of men to a vessel should be limited in proportion to the tonnage of the vessel and that one or two officers be allowed to board a vessel to ascertain the number of men on board. No press gang should be allowed to go on board until it should be found that there were more than the stipulated number of seamen on board, and until the masters had refused to deliver the extra men, who were to be named by the master himself. Even under these circumstances the American consul, in every instance, was to be called in.<sup>5</sup>

Later, in referring to Pinckney certain complaints, made by the merchants of Virginia, of sailors being taken from American vessels on the coast of Africa by the commander of a British armed vessel, Jefferson

<sup>5</sup> Jefferson to Pinckney, June 11, 1792; American State Papers, For. Rel., III., 574.

wrote: "So many instances of this kind have happened, that it is quite necessary that their Government should explain themselves on the subject, and be led to disavow and punish such conduct."<sup>6</sup> A month later he writes again with respect to the exercise of the practice and says: "It is unnecessary to develop to you the inconveniences of this conduct, and the impossibility of letting it go on."<sup>7</sup>

The inconveniences of impressment were brought to the attention of the American minister not alone through the correspondence of the Secretary of State, but through the hundreds of letters addressed to him by prisoners in the various prisons in England and in prison ships on the British coasts imploring his efforts for their release. Pinckney was successful in securing the discharge of most of the persons thus impressed, but he was unable to secure from the British Government any assurance of the discontinuance of the practice.

When, in 1794, Jay was engaged in the negotiations relating to a convention for indemnities and for commercial arrangements, he alluded to the hardships suffered by American citizens under the practice of impressment. He expressed his confidence that the

<sup>6</sup> Jefferson to Pinckney, Oct. 12, 1792; American State Papers, For. Rel., III., 574.

<sup>7</sup> Jefferson to Pinckney, Nov. 6, 1792; American State Papers, For. Rel., III., 574.

justice and benevolence of the King would lead him, immediately, to liberate American citizens wrongfully detained and that His Majesty's officers, in the future, would abstain from such proceedings.<sup>8</sup>

Lord Grenville replied that if American seamen had been impressed into the King's service, it had been contrary to the King's desire, though he admitted such cases might happen, owing to the difficulty of discriminating between British and American seamen. American citizens, he stated, were invariably released and British officers understood that they were to use proper precaution.<sup>9</sup> No statement, however, upon impressment was contained in the treaty which was signed by Jay and Grenville.

Impressment still continuing, the United States, in order to make all possible accommodation to prevent the excuse for the practice, passed a law, May 28, 1796, which provided for certification of American seamen. Pickering, Secretary of State, transmitting this law to Rufus King, American minister at London, urged the importance of obtaining satisfaction from the British Government upon the subject of impressment. He expressed the opinion, as Jefferson had before, that the vessel should protect the seamen on

<sup>8</sup> Jay to Grenville, July 30, 1794; American State Papers, For. Rel., I., 481.

<sup>9</sup> Grenville to Jay, Aug. 1, 1794; American State Papers, For. Rel., I., 481-482.

board; but stated that he would regard it as a great advance if this principle could be secured merely on the high seas.<sup>10</sup>

He argued that the principle was needed in the interest of humanity, for the withdrawal of seamen on the ocean exposed lives and property to destruction as well as vessels, inasmuch as vessels usually carried no more sailors than they actually needed. The same principle, it was maintained, should operate also in the British colonies and especially in the West Indies, because here the detention in consequence of impressment was attended with serious loss of life and property due to climatic conditions. The remoteness of these districts from the place of supreme authority made the danger of abuse greater than elsewhere. In lieu of impressment, it was suggested that a law might be passed requiring every master of a vessel, upon his arrival in any port of the British colonies, to report his crew at the proper office. If afterwards any additions were made in the way of British subjects, these might be taken away. Impressment of British subjects found in ports of Great Britain and Ireland might be admitted, but this should be controlled by proper regulations to prevent insults and injuries and to insure prompt relief when mistakes occurred.<sup>11</sup>

<sup>10</sup> Pickering to King, June 8, 1796; American State Papers, For. Rel., III., 574-575.

<sup>11</sup> Ibid.

Pickering differentiated three classes of men whom Great Britain had no right whatever to impress. These were native American citizens, American citizens wherever born who were such at the time of the definitive treaty of peace, and foreigners other than British subjects sailing in American vessels. A fourth class in connection with the question of impressment consisted of British born subjects who had become American citizens subsequent to the treaty of peace, or might thereafter be admitted to the rights of citizenship. These were not to be abandoned by the United States, but certain classes especially deserved the protection of the American Government, such as those who had served in American vessels public or private for the same term of years as that in which foreigners serving in British vessels acquired the rights of British subjects, which was understood to be three years, and those persons, originally British subjects, who had resided in the United States for five years and had been formally admitted to the rights of citizenship according to the laws of the United States. Inasmuch as sailors were likely to lose their certificates, Pickering believed that some provision should be made for the admission of other reasonable proof of their citizenship, such as their own oaths with those of their masters, mates, or other credible witnesses. He proposed that the rolls of the crew should be authenticated by the collector of customs and that these then should be ad-



mitted with equal validity with the individual certificates.<sup>12</sup>

When reporting to King several cases of impressment of seamen from American vessels in the fall of 1796, Pickering again urged the importance of taking up the question with the British Government.<sup>13</sup> In a letter to King, October 26, 1796, he pointed out that the British naval officers had impressed Swedes, Danes, Portuguese, and French, which showed that impressment of sailors was not confined to Americans, who were claimed to resemble Englishmen so closely that it was impossible always to distinguish.<sup>14</sup> He complained that Americans were not so promptly released as hitherto owing to the fact that writs of habeas corpus taken out by American agents were no longer given recognition by the British authorities.

In order to avoid the friction attendant upon the impressment of American citizens under the supposition that they were British subjects, Minister King proposed to the British Government that American consuls should be authorized to grant certificates of citizenship to such American seamen as should prove themselves entitled to receive them, and British naval officers

<sup>12</sup> Pickering to King, June 8, 1796; American State Papers, For. Rel., III., 574-575.

<sup>13</sup> Pickering to King, Sept. 10, 1796; American State Papers, For. Rel., III., 575.

<sup>14</sup> Pickering to King, Oct. 26, 1796; American State Papers, For. Rel., III., 575.

should be instructed by their Government to respect such certificates.<sup>15</sup>

The British Government objected to King's proposal as affording no sufficient security that British subjects would not be protected under the guise of American citizenship. They similarly objected to the general law that Congress had passed with regard to certification of American seamen and also to the order which the President had issued to the collectors of the several districts prescribing the evidence on which certificates of citizenship might be granted by such collectors. It was held that the proposed method was subject to the greatest possible abuse and that practice founded on this arrangement "would not differ at all in its effect and consequences, though in name and appearance it might, from a resolution to discharge at once every British seaman on his own assertion, that he is an American citizen."<sup>16</sup>

In the spring of 1799 King again protested to Lord Grenville, as he had on former occasions, against the indiscriminate seizure of seamen from American vessels on the high seas. Grenville gave no satisfaction that it would stop, but promised that all Americans who by mistake had been seized should be discharged

<sup>15</sup> King to Grenville, Jan. 28, 1797; American State Papers, For. Rel., II., 147-148.

<sup>16</sup> Grenville to King, March 27, 1797; American State Papers, For. Rel., II., 148-150.

upon application. The American minister considered this of little account. Indeed, said he, "to acquiesce in it is to give up the right."<sup>17</sup>

The following year John Marshall, then Secretary of State, wrote a most able letter to King in which he discussed the American position upon the subject of impressment. He said: "The United States therefore require positively that their seamen who are not British subjects, whether born in America or elsewhere, shall be exempt from impressments. The case of British subjects, whether naturalized or not, is more questionable; but the right even to impress them is denied. . . . Alien seamen, not British subjects, engaged in our merchant service, ought to be equally exempt with citizens from impressment."<sup>18</sup> Here we have set forth the two principal objections which the United States maintained to the British practice of impressment. One was the actual seizure of American seamen under the claim of taking British deserters, and the second was the right of searching neutral vessels on the high seas for deserting seamen. If these two points could have been kept distinct throughout the negotiations, it might have been easier to come to an agreement upon the subject of impressment. As to the impressment of American seamen, Great Britain, in general, dis-

<sup>17</sup> King to Pickering, March 15, 1799; American State Papers, For. Rel., III., 583.

<sup>18</sup> Marshall to King, Sept. 20, 1800; American State Papers, For. Rel., II., 486-490.

claimed any such intention, so that it should not have been impossible to adjust that point. With respect to the right of search, each nation might have agreed to enact a law compelling the commanders or masters of vessels to surrender deserters to the nation from which they had deserted.

Complaint was made by the British Government to the so-called "protections" given American seamen, on the ground that they were frequently fraudulent in their intentions and were granted without a proper examination of facts by inferior magistrates and notaries. These, it was held, could easily be procured by natural born British subjects who wished to desert the service of their own country. Under such circumstances it was not to be expected that the commanders of British ships of war should pay any regard to such papers. As a means of allaying the present trouble it was proposed that there be no refuge allowed in the territory or vessel of either party to deserters from the other state, and that all such deserters be delivered up on demand to the commander of the vessel from which the desertion had been made or to the commanding officers of the ships of war of the respective nations, or to such other persons as might be duly authorized to make requisition on their behalf, provided proof were made that the deserters so demanded were actually part of the crew of the vessel in question. Consuls and vice-consuls, it was stated, might cause the arrest

of those who had deserted from their country, applying to the courts for the necessary power, to be granted upon proper proofs. Neither of the parties was to demand the delivery of any sailors or subjects or citizens belonging to the other party who had been employed on board the vessels of either of the nations, and who had in time of war voluntarily entered the service of their own sovereign or nation, or who had been compelled to enter such service. It was proposed that the two states should agree to adopt effectual measures for the apprehension and delivery of deserting seamen, and that public ships of war, forts, garrisons, or posts should not forcibly be entered to compel the delivery of such persons as might have deserted.<sup>19</sup>

This proposal would have appeared to recognize the pretensions of the British claims to impressment with reference to merchant vessels. The American Secretary of State, being desirous of acceding to the main proposition but unwilling to grant an indirect sanction to the principle always denied by the American Government, offered a counter-project which contained reciprocal engagements for the surrender of deserters upon condition that the practice of impressment should be discontinued in respect to private vessels as well as public vessels.<sup>20</sup>

<sup>19</sup> Liston to Pickering, Feb. 4, 1800; American State Papers, For. Rel., III., 576-577.

<sup>20</sup> Pickering to Liston, May 3, 1800; American State Papers, For. Rel., III., 577-578.

The purpose of the proposed scheme for the mutual restoration of deserting seamen being so desirable in order to remove the alleged necessity of Great Britain's resorting to impressment, the President submitted the question to the other members of his Cabinet for suggestions. Secretary Wolcott of the Treasury thought that the British proposal did not sufficiently provide against the impressment of seamen, and he proposed a counter-project similar to that of the Secretary of State. He suggested that the proof of desertion should be required within two years from its occurrence. He thought that the commander or other officers should not be empowered to enter a public or private vessel of the other party on the high seas; and that it should be "expressly declared to be the understanding of the contracting parties, that the mutual restitutions of persons claimed as deserters shall only be made by the free and voluntary consent of the military officers employed in the land service, or the commanders of the public or private ships or vessels of the two parties, or in pursuance of the decisions of the courts."<sup>21</sup> The Secretary of War objected to the British minister's proposal that the United States should demand the delivery of such seamen as had been employed on board British vessels and who had in time of war or threatened hostilities voluntarily entered the British service,

<sup>21</sup> Wolcott to Adams, April 14, 1800; American State Papers, For. Rel., III., 579.

or who had been compelled to enter it according to the law and practice of Great Britain.<sup>22</sup> The Attorney-General expressed his concurrence with the project as drawn by the Secretary of the Treasury.<sup>23</sup> The Secretary of the Navy agreed with the proposed reply of the Secretary of State. He considered that the British proposal secured to Great Britain all that it could desire, but that it afforded no security to the United States against the practice of which the United States complained. The Secretary of the Navy preferred to have no article rather than not to include in it the prohibition of impressment from merchant vessels on the high seas.<sup>24</sup> The opinions of the Cabinet displayed the degree of unity of American sentiment upon the subject of impressment. Great Britain, however, paid little attention to American feeling, and the proposal of the Secretary of State was rejected; but when the general pacification of Europe occurred in 1801, and the treaty of Amiens brought a respite to British ships of war, impressment ceased for the time as there was no need of the practice to secure sailors.

Minister King, who during the war had endeavored

<sup>22</sup> McHenry to Adams, April 18, 1800; American State Papers, For. Rel., III., 579-580.

<sup>23</sup> Lee to Adams, April 30, 1800; American State Papers, For. Rel., III., 581.

<sup>24</sup> Stoddart to Adams, April 23, 1800; American State Papers, For. Rel., III., 580.

to obtain an agreement that, after hostilities should cease, neither party would upon the high seas impress or take any seamen or other persons out of the vessels of the other, continued to urge the subject upon the British Government. When it appeared likely that war between Great Britain and France would be renewed, King prevailed upon Lord Hawkesbury, British Secretary of Foreign Affairs, and Lord Vincent, First Lord of the Admiralty, to consent to a convention which provided against impressment in the following terms: "No seamen nor seafaring person shall, upon the high seas and without the jurisdiction of either party, be demanded or taken out of any ship or vessel belonging to the citizens or subjects of one of the parties, by the public or private armed ships or men of war belonging to, or in the navy of the other party; and strict orders shall be given for the due observance of this engagement."<sup>25</sup> Each state was to prohibit its citizens or subjects from carrying away from the territories or colonial possessions of the other any seamen belonging to such other ports. The treaty was to be in force for five years.

Before this treaty was actually signed the British commissioners, after consultation with Sir William Scott, the Judge of the High Court of Admiralty, proposed that the narrow seas should be excepted in the

<sup>25</sup> King to Secretary of State, July, 1803; American State Papers, For. Rel., II., 503-504.



operation of the article. With that exception they expressed their willingness to sign the convention. King considered this action as a mere subterfuge and an extravagant pretension for Great Britain to revive the doctrine of *mare clausum*. He felt compelled "to abandon the negotiation, rather than to acquiesce in the doctrine it proposed to establish." King returned to the United States in the summer of 1803 and was succeeded by James Monroe, who had been appointed April 18 of that year.

In the instructions given to Monroe with reference to a treaty, which it was hoped that he might be able to negotiate, all other questions in dispute were to be omitted, if only agreement could be secured on impressment, blockades, visit and search, contraband, and trade with the enemies' colonies.<sup>26</sup>

The Secretary of State enclosed a projet of a treaty giving the articles both as the American Government would prefer that they should be, and also as they might ultimately be agreed upon, if the British Government insisted. The first article of the projet dealt with impressment. In the preferred form it was provided that no person should "upon the high seas and without the jurisdiction of either party, be demanded or taken out of any ship or vessel belonging to citizens or subjects of one of the parties, by the public or

<sup>26</sup> Madison to Monroe, Jan. 5, 1804; American State Papers, For. Rel., III., 81-89.

private armed ships belonging to, or in the service of, the other, unless such person be at the time in the military service of an enemy of such other party."<sup>27</sup>

In the article used as an ultimatum it was provided, in addition to the foregoing statement, "it is to be understood that this article shall not exempt any person on board the ships of either of the parties from being taken therefrom by the other party, in cases where they may be liable to be so taken according to the laws of nations, which liability, however, shall not be construed to extend in any case to seamen, or seafaring persons being actually part of the crew of the vessel in which they may be, nor to persons of any description passing from one port to another port of either of the parties." A second article provided that subjects or citizens of one state, being in the dominions of the other, should not be compelled to serve on board of any vessel public or private belonging to the other party; and all subjects or citizens serving under compulsion should be liberated forthwith.

In communicating this project, Secretary Madison discussed the alleged right of impressment on the part of Great Britain. The right was denied, first, because no treaties, British or other, could be found to sanction it. Whilst treaties "admit a contraband of war by enumerating its articles, and the effect of a

<sup>27</sup> Madison to Monroe, Jan. 5, 1804; American State Papers, For. Rel., III., 81-89.

real blockade by defining it, in no instance do they affirm or imply a right in any sovereign to enforce his claims to the allegiance of his subjects on board neutral vessels on the high seas; on the contrary, whenever a belligerent claim against persons on board a neutral vessel is referred to in treaties, enemies in military service alone are excepted from the general immunity of persons in that situation; and this exception confirms the immunity of those who are not included in it."<sup>28</sup>

If there be a right of allegiance in time of war, it was averred, the same must exist in time of peace, and the exercise of sovereign rights outside of the nation's jurisdiction in time of war would imply a corresponding exercise of power in time of peace. The law of allegiance upon which the principle of impressment was built up by Great Britain, Madison maintained, was a municipal law and as such was not rightfully enforceable outside of the jurisdiction of Great Britain; that if it might be enforced on board foreign vessels on the high seas with regard to persons, it might with equal propriety be enforced against articles of property if these were exported in violation of a domestic law. Thus every commercial regulation in time of peace as well as of war would be obligatory upon foreigners and their vessels, not only within the

<sup>28</sup> Madison to Monroe, Jan. 5, 1804; American State Papers, For. Rel., III., 81-89.

jurisdiction of a given state, but in every sea, at any distance, where an armed vessel might be met with. The admission of the practice of impressment, it was shown, implied the right of search for such subjects, and this was the source of serious inconvenience. Madison argued that the alleged right was not only unsupported by treaties, but that every principle of justice and reason was against the practice. By its exercise persons were deprived of a regular trial which was granted when property was involved, and decisions were left to the caprice and personal interest of officers, when such decisions in the case of property were made by an impartial court, not by the captain himself.<sup>29</sup>

It was pointed out that the very resemblance of American and British seamen, which the British Government alleged as one of the reasons for the enforcement of impressment, made it more important not to leave the decision to interested officers. Madison declared that, if the practice were to be allowed, the most obvious and just rule would be to require that proof of allegiance be made, instead of the reverse which had been the British practice. The inconsistency of Great Britain's action with reference to impressment was clearly shown. She had herself refused to give up American seamen who had voluntarily engaged in

<sup>29</sup> Madison to Monroe, Jan. 5, 1804; American State Papers, For. Rel., III., 81-89.

her service; she had also refused to release impressed American citizens if they had either settled or married within British dominions.<sup>30</sup>

The Secretary of State held that the British practice of impressment was much less needful than was commonly supposed, as the number of British seamen employed upon American vessels was never large. Of the 2059 cases of impressment from 1797 to 1801 only 102 had been detained as being British subjects; 1042 were discharged as not being British subjects; while 805 others were detained for further proof, with the presumption in favor of American citizenship. Thus it was evident that for every British seaman gained through impressment ten others were made victims of this system. Monroe was instructed not to admit the narrow sea jurisdiction which had been proposed in the former negotiation.<sup>31</sup>

In a letter a few weeks later Madison notified Monroe that the boundary treaty negotiated by King with Lord Hawkesbury, May 12, 1803, had been ratified with the exception of the fifth article. Monroe was instructed to proceed to the exchange of ratifications if the British Government consented to accede to the change.<sup>32</sup> The objection made to the fifth article

<sup>30</sup> Madison to Monroe, Jan. 5, 1804; American State Papers, For. Rel., III., 81-89.

<sup>31</sup> Ibid.

<sup>32</sup> Madison to Monroe, Feb. 14, 1804; American State Papers, For. Rel., III., 89-90.

arose from the fact that the signature and ratifications of the treaty were made subsequent to the treaty with France ceding Louisiana to the United States, and it was feared that the line to be run in pursuance of the fifth article might be found to abridge the northern extent of the Louisiana acquisition. The British Government subsequently refusing to accede to this exception, the treaty remained unratified.

Monroe, on April 2, 1804, informed Lord Hawkesbury of his instructions to negotiate a treaty covering the disputed maritime questions. He found Hawkesbury friendly and apparently in sympathy with the objects proposed. Hawkesbury requested from Monroe a projet of a treaty which he promised upon receiving to submit to the Cabinet. Monroe complied with the request, and submitted a projet in the form which Madison had directed. This provided against impressment on the high seas except in case of persons at the time in the military service of an enemy of the impressing state. Provision was made against compelling a subject or citizen of one state being within another state to serve on board the vessels of the latter state; and all so held were to be liberated and given adequate compensation for their return home. As a complementary article to that upon impressment was one providing for the mutual restoration of deserters. The treaty also included articles upon the procedure in the exercise of the right of search and definition of

blockaded ports. It was proposed that the treaty should be in force for five years.<sup>33</sup>

Shortly after this projet was presented changes occurred in the British Cabinet which postponed any consideration of the American claims. Lord Harrowby replaced Lord Hawkesbury as Secretary of Foreign Affairs, and Lord Melville took the place of Lord Vincent at the head of the Admiralty. During the last weeks of the old Ministry, when a change was expected, Monroe thought it useless to press matters. Two months passed after the new Ministry came into power, and no attention was given to the American projet submitted to Lord Hawkesbury, or to the consideration of the treaty on boundaries which had been referred to the British Government. Lord Harrowby when informed of the change in the treaty of boundaries protested against the American method of ratifying parts of a treaty, which he declared to be "new, unauthorized, and not to be sanctioned."<sup>34</sup>

Monroe found Lord Harrowby less friendly than his predecessor. He reported to Madison that "the conduct of Lord Harrowby through the whole of this conference was calculated to wound and to irritate. Not a friendly sentiment towards the United States or their

<sup>33</sup> Monroe to Madison, April 15, 1804; American State Papers, For. Rel., III., 91-92.

<sup>34</sup> Monroe to Madison, June 3, 1804; American State Papers, For. Rel., III., 92-94.

Government escaped him.' . . . 'Every thing that he said was uttered in an unfriendly tone, and much more was apparently meant than was said.'<sup>35</sup> Monroe expressed his surprise at a deportment of which he had seen no example before since he arrived in the country. He considered that the subjects of the negotiations were indefinitely postponed.

The British Cabinet at this time were discussing a coalition of Great Britain with the northern Powers, especially Russia and Sweden. With such coalition in view it was considered by Monroe that the tone of the British Government to neutral Powers would be less friendly. The American minister was, however, strongly in favor of peace with Great Britain "from a knowledge," as he wrote, "that much expense and injury must result from war, while it is impossible for us to derive any advantage from it," yet he asserted the need of firmness in councils against Great Britain to resist and to punish the injuries inflicted by her.<sup>36</sup>

On August 3, Monroe had a conference with Lord Harrowby during which he again urged the supreme importance of a satisfactory adjustment of the impressment question. A month later the subject was again presented by Monroe in the form of a treaty

<sup>35</sup> Monroe to Madison, June 3, 1804; American State Papers, For. Rel., III., 92-94.

<sup>36</sup> *Ibid.*



which he proposed for adoption. Lord Harrowby promised to submit the proposition to the Cabinet. In the proposed treaty Monroe omitted the article on contraband which had been suggested by Madison, because he considered it likely that such an article would bring into discussion the subject of provisions, which it was to the interest of the United States not to admit. The article upon procedure in prize courts was also omitted because it conformed to the existing practice, and needed no agreement upon the subject.<sup>37</sup>

Monroe, receiving no response from Lord Harrowby, was in doubt whether to consider the negotiation at an end or to consider it merely suspended.<sup>38</sup> He felt that there were objections to the first course, because a declaration to Lord Harrowby that the negotiation was ended would imply that it had failed in its object and might appear to be a sort of rupture between the two countries; and in the second place a measure of such tone was too strong for the previous note of the British minister, which had sought only delay, and in a conciliatory manner. It might, he thought, cause a resentment on the part of the Ministry and perhaps of the country in view of the condition of British affairs at the time. Again, he considered that such a measure with the implications connected with it was

<sup>37</sup> Monroe to Madison, Sept. 8, 1804; American State Papers, For. Rel., III., 95-97.

<sup>38</sup> Monroe to Madison, Oct. 3, 1804; American State Papers, For. Rel., III., 98-99.

not justified by fact or the true interest of the United States. The negotiation had not failed in its great objects, for American commerce never was so much favored as during the last three years, nor was there ever less cause of complaint furnished by impressment. Such a declaration, it was conceived, would be contrary to the spirit in which the negotiation had been begun, and would not be authorized by the instructions. Further, if the negotiation was kept open, it would be easier for the United States to renew it at any time. For these reasons Monroe decided to meet the friendly sentiments of Lord Harrowby with like sentiments, and, while regretting the delay, to admit that the state of affairs might impose it.<sup>39</sup>

Monroe thought that employing moderation while still making earnest efforts to settle all differences by peaceful measures would strengthen the American Government in any of the most vigorous measures which might be thought necessary. "A virtuous and free people," said he, "will be more united in support of such measures, however strong they may be, when they see, by the clearest evidence, that the cause is not only just, but that their Government has done every thing in its power which the national honor and interest would permit, to avoid such an extremity."<sup>40</sup>

<sup>39</sup> Monroe to Madison, Oct. 3, 1804; American State Papers, For. Rel., III., 98-99.

<sup>40</sup> Ibid.

From the Treaty of Amiens, March, 1802, to the middle of 1804, the United States had had little cause for complaint with regard to commerce and impressment, but during the last six months of 1804 the British practice again created a most serious condition, which steadily grew worse throughout the following year. In the spring of 1805 Madison again wrote to Monroe urging the necessity of securing some relief from the practice of impressment. He said: "The experience of every day shows more and more the obligation on both sides to enter seriously on the means of guarding the harmony of the two countries against the dangers with which it is threatened, by a perseverance of Great Britain in her irregularities on the high seas, and particularly in the impressments from American vessels."<sup>41</sup> He mentioned the growing sensibility in the United States on the subject of impressment, seen in the vote of the House of Representatives calling upon the Department of State to submit papers dealing with impressment and in the passage of an act of Congress authorizing certain proceedings against British officers committing on the high seas trespasses or torts on board American vessels.

After the interruption in the negotiations between Monroe and Lord Harrowby, in September, 1804, it was nearly a year before the consideration of impress-

<sup>41</sup> Madison to Monroe, March 6, 1805; American State Papers, For. Rel., III., 99-101.

ment could be renewed. Monroe was absent from London from October, 1804, until the following summer, having been appointed special minister to adjust the controversy between the United States and Spain with respect to the boundaries of the newly acquired territory of Louisiana. Upon his return he attempted to renew the negotiations with Lord Mulgrave, who now held the office of Secretary of Foreign Affairs. Monroe found this gentleman as little inclined as his predecessor to agree upon any arrangement upon impressment which would be satisfactory to the United States.<sup>42</sup>

The American minister from the treatment which he had received felt that the attitude of Great Britain towards the United States at this time was one of studied delay, designed to subject American commerce to every restraint in its power. He attributed the attitude of Great Britain to her great jealousy of the increasing prosperity of the United States and to her determination to leave nothing untried which would tend to impair that prosperity. Great Britain's indifference to the United States, Monroe conceived, arose from the general feeling in Great Britain that a popular government, such as the United States, would be utterly incapable of any vigorous or persevering action and in consequence would be unable to resist a system

<sup>42</sup> Monroe to Madison, Oct. 18, 1805; American State Papers, For. Rel., III., 106-108.

of commercial hostility on the part of Great Britain, but must yield. Monroe, though in favor of peace, would not shrink from war if that should be necessary. He urged that the United States offer resistance to the British seizures even at the risk of war. "Perhaps no time," said he, "was ever more favorable for resisting these unjust encroachments than the present one. The conduct of our Government is universally known to have been just, friendly, and conciliating towards Great Britain, while the attack by her Government on the United States is as universally known to be unjust, wanton, and unprovoked. The measure has wounded deeply the interests of many of her own people, and is not a popular one. The United States furnish them at all times one of the best markets for their manufactures, and at present almost the only one. Her colonies are dependent on us. Harassed as they are already with war, and the menaces of a powerful adversary, a state of hostility with us would probably go far to throw this country into confusion. It is an event which the ministry would find it difficult to resist, and therefore cannot, I presume, be willing to encounter."<sup>43</sup>

With a change in the British Ministry, caused by the death of Pitt in January, 1806, it was thought by Monroe that American interests might receive more favorable attention. While the King wanted to ap-

<sup>43</sup> Monroe to Madison, Oct. 18, 1805; American State Papers, For. Rel., III., 106-108.

point Lord Hawkesbury in Pitt's place, he was obliged to yield to the opposition, and so appointed Lord Grenville Prime Minister and Charles Fox Secretary of Foreign Affairs. Though Fox was a man of liberal views and had shown in the American Revolution most pronounced favoritism for the United States, it was soon discovered that not even he could avail against the pronounced and prejudiced views of the body of English statesmen upon the subject of impressment and neutral trade. In the Cabinet were several who had differed with Fox on former occasions in respect to the policy of Great Britain towards the United States. In the first interviews with Fox, Monroe was extremely hopeful of being able to accomplish something satisfactory, especially with regard to the trade with the colonies of England's enemies.<sup>44</sup> In his hopefulness of the outcome Monroe advised that for the present no hostile measures be adopted by Congress, and if any should have been adopted that their execution be postponed.<sup>45</sup> Monroe discussed with Fox the various matters in dispute between the two countries, such as the rights of neutral trade, impressment, and boundaries. In reviewing the history of the negotiation on impressment he explained the project which had

<sup>44</sup> Monroe to Madison, Feb. 12, 1806; American State Papers, For. Rel., III., 112-113.

<sup>45</sup> Monroe to Madison, Feb. 28, 1806; American State Papers, For. Rel., III., 113.

been offered to Lord Hawkesbury as intended "to prevent abuses and the ill consequences incident to them, not to acquire any advantage to the United States by the establishment of controverted principles in the one, or unreasonable pretensions in the other case."

The seriousness of the situation, rather than confidence in a friendly disposition on the part of the British Ministry, led the American Government, in the spring of 1806, to appoint William Pinkney and James Monroe as Commissioners Extraordinary and Plenipotentiary "to settle all matters of difference between the United States and the united kingdom of Great Britain and Ireland, relative to wrongs committed between the parties on the high seas, or other waters, and for establishing the principles of navigation and commerce between them."<sup>46</sup> In the instructions to Monroe and Pinkney, given May 17, 1806, Madison stated that the President insisted upon some adequate provision regarding impressment as indispensable to any stipulation requiring a repeal of the act shutting the market of the United States against certain British manufactures. The commissioners might substitute for the ultimatum upon impressment given in the instructions of January 5, 1804, the following: "No seamen nor seafaring

<sup>46</sup> Monroe to Fox, Feb. 25, 1806; American State Papers, For. Rel., III., 113-114. Madison to Monroe, April 23, 1806; American State Papers, For. Rel., III., 117.

persons shall, upon the high seas, and without the jurisdiction of either party, be demanded or taken out of any ship or vessel belonging to the citizens or subjects of one of the parties, by the public or private armed ships or men of war, belonging to or in the service of the other party; and strict orders shall be given for the due observance of this engagement."<sup>47</sup> These were the terms of the article agreed to by King and Hawkesbury, which had been frustrated through the insistence by Lord St. Vincent, First Lord of the Admiralty, that an exception be made to its application in the case of the narrow seas.

Shortly after the arrival of Pinkney, Fox was taken seriously ill and the negotiation was in consequence delayed. Finally, Lord Auckland and Lord Holland were appointed commissioners to treat with the American ministers. This news was communicated to the American commissioners at a dinner given by Lord Grenville at which were present, besides the Americans, the Lord Chancellor, Lord Howick, Lord Auckland, Lord Holland, Erskine, and others of distinction. At this meeting, Lord Auckland invited Monroe and Pinkney to visit him in the country, saying, "I trust we shall be able to do some good to mankind, if your powers are sufficiently extensive."<sup>48</sup>

<sup>47</sup> Madison to Monroe and Pinkney, May 17, 1806; American State Papers, For. Rel., III., 119-124.

<sup>48</sup> Monroe and Pinkney to Madison, Aug. 15, 1806; American State Papers, For. Rel., III., 132.



In formally announcing the appointment of Lord Auckland and Lord Holland, Fox observed that "His Majesty, in this appointment of commissioners, has given a fresh proof of his most anxious and constant desire to bring to a speedy termination all discussions between the two countries, and to form such arrangements as may tend to render perpetual a system of mutual friendship and cordiality so conducive to the honor and interests of both."<sup>49</sup> This language was, of course, purely formal.

On August 28 the commissioners of the two countries met and discussed the various controverted subjects. Four days later the British requested to learn more precisely the American views and particularly to be informed as to what stipulation in connection with impressment was proposed for restoring British seamen who had deserted. The American commissioners presented as a project on this point the form contained in the instructions to Monroe in January, 1804, providing for the mutual restoration of deserters and a renunciation of impressment.<sup>50</sup>

The British ministers manifested a strong aversion to any formal renunciation or abandonment of their alleged claims to impressment, and they urged as a

<sup>49</sup> Fox to Monroe, Aug. 20, 1806; American State Papers, For. Rel., III., 132.

<sup>50</sup> Monroe and Pinkney to Holland, Sept. 10, 1806; American State Papers, For. Rel., III., 136-137.

substitute for such an abandonment a promise that the persons composing the crews of American ships should be furnished with authentic documents of citizenship, the nature and form of which should be settled by treaty; that these documents should completely protect those to whom they related; but that subject to such protections, the ships of war of Great Britain should continue to visit and impress on the high seas as before.<sup>51</sup> The American commissioners took the position that it was impossible for the United States to allow the practice as it was derogatory to the rights of sovereignty. An interval of two months now elapsed during which the negotiations were suspended owing to the critical illness and death of Fox, who was the uncle of Lord Holland.

When the American commissioners again reported to their home Government, November 11, 1806, they had not yet abandoned all hopes of securing a satisfactory arrangement upon some of the points in dispute, but they admitted that there was an insurmountable difficulty attached to the subject of impressment.<sup>52</sup> They said that they had advanced every argument possible and had proposed every suitable expedient that they could devise, consistent with the principle, to

<sup>51</sup> Monroe and Pinkney to Madison, Sept. 11, 1806; American State Papers, For. Rel., III., 133-135.

<sup>52</sup> Monroe and Pinkney to Madison, Nov. 11, 1806; American State Papers, For. Rel., III., 137-140.

obviate the inconveniences that were urged on both sides as likely to result from its admission, but that all their efforts had been without avail. The British still insisted upon the right of their Government to seize its subjects on board neutral merchant vessels on the high seas, and maintained that the relinquishment of the right at that time would go far to overthrow their naval power, upon which the safety of their state essentially depended. The American proposition to give the aid of the local authorities of the United States to apprehend and restore deserters from their vessels in exchange for a renunciation of the claim to impressment, the British held, did not afford an adequate remedy for the evil complained of. Deserters, it was alleged, might go into the country, but would more likely go on board American vessels immediately putting out to sea, where the American flag would then protect them. Desertions were also likely to occur in neutral ports, in which case the law proposed would be unavailing. The British urged the American commissioners to stipulate that Congress would pass a law (to be reciprocal) which should make it a penal offense for the commanders of an American vessel to receive British subjects deserting from a vessel of Great Britain, and which should provide that these be restored upon their arrival in the United States on suitable application. The American ministers expressed their willingness to provide

a remedy, which they considered was found in the proposed article for mutual restoration of deserters. The British objecting that the term deserters was not sufficiently broad and suggesting the addition of the words "seafaring people quitting their service," the Americans acquiesced in the change. The British commissioners then appeared to give their consent to the article upon impressment, but when it was presented to the Cabinet it was at once rejected, the Board of Admiralty and the Crown officers being opposed to it. The American ministers no longer had hopes of securing any satisfactory stipulation on impressment.

Later, the British commissioners proposed as a counter-project the passage of laws which, on the one hand, should make it penal for British commanders to impress American citizens on board American vessels on the high seas, and on the other hand, should make it penal for the officers of the United States to grant certificates of citizenship to British subjects. As this proposition would not stop the exercise of the practice of impressing British subjects upon American vessels, the American commissioners regarded it as inadequate and refused to consider it. It would fail, they said, to remedy the evils and would be an abandonment of their rights.<sup>53</sup> The British commissioners stated that, while their Government could not disclaim or derogate from

<sup>53</sup> Monroe and Pinkney to Madison, Nov. 11, 1806; American State Papers, For. Rel., III., 137-140.

a right which had been uniformly maintained and in the exercise of which the security of the British navy might be involved, they had, nevertheless, authorized their commissioners to give the most positive assurance that instructions had been given and should be repeated and enforced for the observance of the greatest caution in impressing seamen.<sup>54</sup>

The British proposing that they proceed to the other subjects, leaving impressment out of the question for the time, the American commissioners consented, believing that it was the intention of the British Government no longer to exercise the practice of impressment, but that they were merely unwilling to renounce a claim which had long been held valid. Monroe believed that the informal explanation of the British commissioners upon impressment was sufficient to warrant the American commissioners in going forward with the other questions. He considered such action justifiable because by it the rights of the parties were reserved and the negotiations could be continued on those particular topics, after a treaty should have been formed upon the others. Great Britain, he maintained, would be bound not to trespass on those rights while that negotiation was depending; and in case she did trespass on them, in the slightest degree, the United States would be justified in breaking off the negotia-

<sup>54</sup> Monroe and Pinkney to Madison, Nov. 11, 1806; American State Papers, For. Rel., III., 137-140.

tions and appealing to force in vindication of her rights.<sup>55</sup> "The mere circumstance," said he, "of entertaining an amicable negotiation by one party for the adjustment of a controversy, where no right had been acknowledged in it, by the other, gives to the latter a just claim to such a forbearance on the part of the former. But the entertainment of a negotiation for the express purpose of securing interests sanctioned by acknowledged rights, makes such claim irresistible."<sup>56</sup>

With impressment removed from the discussion, the commissioners were not long in coming to an agreement upon the other subjects and a formal treaty was concluded. This treaty, signed December 31, 1806, contained provisions which were in many respects more favorable to the United States than those contained in the Jay treaty of 1794.<sup>57</sup>

While the negotiations were in progress news came of the Berlin decree, which was issued November 21. The purpose of this decree was to injure Great Britain through an attack upon her commercial trade. The British Government claimed that for neutrals to submit to this decree would be to concur in the hostile object of the enemy. Therefore the British commis-

<sup>55</sup> Monroe to Madison, Feb. 28, 1808; American State Papers, For. Rel., III., 173-183.

<sup>56</sup> *Ibid.*

<sup>57</sup> Monroe and Pinkney to Madison, Jan. 3, 1807; American State Papers, For. Rel., III., 142-147.

sioners were instructed to secure assurance from the Americans that the United States would not allow its trade with Great Britain to be interfered with without resistance. The American commissioners were unable to make any such assurances, which would have virtually allied the United States with Great Britain in hostile opposition to France. Holland and Auckland, when signing the treaty, presented a protest against the Berlin decree, reserving to the British Government the right, should the decree be actually enforced against neutrals and be submitted to by them, to take such measures of retaliation as might be deemed expedient.<sup>58</sup> In transmitting the note to Washington the American representatives said, "We do not consider ourselves a party to it, or as having given it in any the slightest degree our sanction."<sup>59</sup> The treaty failed to provide not only against impressment, but also for the settlement of indemnities claimed by the United States against Great Britain. The British had objected to the American claims on the ground of the appearance of coercion. An offer had been made to consider them later.

President Jefferson, upon receiving intimation from the American commissioners that they were about to

<sup>58</sup> Note from Holland and Auckland, Dec. 31, 1806; American State Papers, For. Rel., III., 151-152.

<sup>59</sup> Monroe and Pinkney to Madison, Jan. 3, 1807; American State Papers, For. Rel., III., 142-147.

proceed to the negotiation of a treaty with merely an informal understanding upon impressment, at once objected to the plan as not comports with his views of national sentiment or legislative policy.<sup>60</sup> In the opinion of the President it was better that the negotiation should terminate without any formal compact whatever if no stipulation regarding impressment could be secured. Under such circumstances the commissioners were instructed to terminate the negotiation with merely an informal, friendly understanding upon the subjects under discussion. As long as this relationship should be duly respected in practice, particularly with reference to neutral trade and impressment, the United States would refrain from putting the non-importation act into operation. The British commissioners in the course of their negotiations had alleged that there were no recent causes of complaint on impressment. The Secretary of State refuted that assertion, and declared that in American seas, including the West Indies, impressments had never been more numerous or vexatious.

Before these instructions had reached the commissioners, however, the treaty had been signed. This, when submitted to the President, was rejected by him without being referred to the Senate. Jefferson refused to sign a treaty with impressment omitted, be-

<sup>60</sup> Madison to Monroe and Pinkney, Feb. 3, 1807; American State Papers, For. Rel., III., 153-156.



cause, he said, "a concession on our part would violate both a moral and political duty of the Government to our citizens."<sup>61</sup> In announcing the rejection of the treaty the Secretary of State informed the American commissioners that the President had authorized them in case the British rejected every other arrangement upon impressment to admit the following article: "It is agreed that, after the term of — months, computed from the exchange of ratifications, and during a war in which either of the parties may be engaged, neither of them will permit any seaman, not being its own citizen or subject, and being a citizen or subject of the other party, who shall not have been for two years, at least, prior to that date, constantly and voluntarily in the service, or within the jurisdiction of the parties, respectively, to enter or be employed on board any of its vessels navigating the high seas; and proper regulations, enforced by adequate penalties, shall be mutually established for distinguishing the seamen of the parties, respectively, and for giving full effect to this stipulation."<sup>62</sup>

Soon after the proposed treaty was transmitted to America and while the commissioners were negotiating over a supplemental project respecting boundaries,

<sup>61</sup> Madison to Monroe and Pinkney, May 20, 1807; American State Papers, For. Rel., III., 166-173.

<sup>62</sup> Ibid.

another change in the British Ministry occurred. Lord Grenville and his associates were obliged to retire and the friends of the late Pitt came again into power. Canning succeeded Lord Howick in the Foreign Office.<sup>63</sup> The change in the Administration halted diplomatic negotiations for several months. The much praised efficiency of ministerial government was discredited again.

The American commissioners had barely opened negotiations with the new Ministry when word was received of an occurrence which made the question of impressment the one great object of the United States. This event was the attack of the British ship of war *Leopard* upon the American frigate *Chesapeake*, and the impressment of four sailors claiming to be Americans. This (was the first instance of impressment from a public vessel of the United States, and it aroused the indignation of the country.) It was considered the logical result of the illegal practice and therefore to call for immediate resistance.

The President at once issued a proclamation interdicting the use of American waters to all British armed vessels, and he caused instructions to be sent to the minister at London to make a demand for reparation from the British Government. The least, said he, that was to be expected in this regard was a disavowal of

<sup>63</sup> Monroe and Pinkney to Madison, April 22, 1807; American State Papers, For. Rel., III., 160-162.

the act and a restoration of the men impressed. In addition, an entire abolition of the practice of impressment was deemed "an essential and indispensable part of the satisfaction . . . and, if possible, without the authorized rejection from the service of the United States of British seamen who have not been two years in it."<sup>64</sup> The American Government, it was stated, had a right to expect not only ample reparation, but reparation made without delay. Monroe was ordered, in case the expectation of reparation should fail, to hasten home all American vessels in British ports and to communicate the state of affairs to all American war vessels in the Mediterranean. He was instructed to cease all negotiations with the British Government on other subjects "until satisfaction on this be so pledged and arranged as to render negotiation honorable."<sup>65</sup>

There was a strong popular demand for war in the United States, but Madison considered it unjustifiable at that time, inasmuch as the act had probably been that of a British admiral alone and unauthorized by the British Government. A declaration of war at once was, in Madison's judgment, tactically unwise because of the numerous British cruisers in American waters

<sup>64</sup> Madison to Monroe, July 6, 1807; American State Papers, For. Rel., III., 183-185.

<sup>65</sup> Ibid.

which could have readily seized American ships as they gradually returned from foreign seas.<sup>66</sup>

Even before Monroe had officially learned of the attack upon the *Chesapeake*, Canning had informed the American minister of the fact and had hastened to express his regret, giving assurances that, if the British officers were found to be culpable, the American Government should be offered a "most prompt and effectual reparation" for the act.<sup>67</sup>

Monroe, before he had received his instructions, thought it was incumbent upon him to press the British Government for reparation. He, therefore, addressed a note to Canning in which he referred to the attack of the *Leopard* upon the *Chesapeake* as an attempt "to assert and enforce the unfounded and most unjustifiable pretension to search for deserters." He asked for a frank disavowal of the principle upon which the search was made and an assurance that the officer who had been responsible should suffer punishment.<sup>68</sup>

Canning, apparently irritated by Monroe's letter, replied a few days later in a rather harsh tone, stating that Great Britain would make reparation when all the facts were known. He disclaimed any pretension on

<sup>66</sup> Madison to Monroe, July 6, 1807; American State Papers, For. Rel., III., 183-185.

<sup>67</sup> Canning to Monroe, July 25, 1807; American State Papers, For. Rel., III., 187.

<sup>68</sup> Monroe to Canning, July 29, 1807; American State Papers, For. Rel., III., 187.

the part of Great Britain of a right to search ships of war in the national service of any state for deserters. If the facts should prove as represented, he assured Monroe, the British Government would disavow the act and reprove the conduct of their officers.<sup>69</sup>

The two countries were now on the verge of war. The American people generally took a defiant attitude, and in Great Britain there was a strong war party made up of ship owners, the navy, East and West India merchants, and leading politicians.<sup>70</sup> The British Government strongly resented the proclamation of the President, which had been issued "without requiring or waiting for any explanation"<sup>71</sup> from Great Britain. This formed a pretext for delaying action on the part of the British Government.

The special joint negotiation of Monroe and Pinkney having been suspended by the affair of the *Chesapeake*, Monroe alone made a formal demand upon the British Government for reparation. In presenting this claim, he urged the general question of impressment from merchant vessels, maintaining with forceful argument that the objections to impressment from ships of war were equally applicable in the case of merchant ships,

<sup>69</sup> Canning to Monroe, Aug. 3, 1807; American State Papers, For. Rel., III., 188.

<sup>70</sup> Monroe to Madison, Aug. 4, 1807; American State Papers, For. Rel., III., 186-187.

<sup>71</sup> Canning to Monroe, Aug. 8, 1807; American State Papers, For. Rel., III., 188.

for public law and private rights were violated in both cases and the liability to individual suffering was the same.<sup>72</sup>

Monroe suggested to Canning as a suitable way of making reparation the return of the impressed men to the ships from which they were taken, the punishment of the officers involved in the affair, the suppression of impressment from merchant vessels, and the announcement of such reparation through the medium of a special mission. The British Government held that the proclamation of the President interdicting British vessels from American waters was an act of redress, while the American minister maintained that it was merely a police measure and not an act of retaliation.<sup>73</sup>

Canning argued that the affair of the *Chesapeake* was different from the practice which the British alleged as a right, and should not be brought into a discussion of the general question. The right to search ships of war, Canning stated, was not insisted upon, not because the employment and detention of British marines on board national ships was any less injurious to Great Britain than on merchant ships, but because the redress in the one case was to be sought by the Government from the other Government and

<sup>72</sup> Monroe to Canning, Sept. 7, 1807; American State Papers, For. Rel., III., 189-191.

<sup>73</sup> Monroe to Madison, Oct. 10, 1807; American State Papers, For. Rel., III., 191-193.

need not be summarily enforced by the unauthorized officer of a ship of war. Canning declared that it was important to find out whether the Government of the United States had been guilty of refusing to discharge British seamen in its national service previous to the hostile acts of the British officers. He expressed regret that the American minister had coupled with the discussion the question of impressment of seamen from merchant vessels. This right, he maintained, had been exercised by Great Britain from the earliest ages of the British naval power, even without any qualification or exception in favor of national ships of war, and the distinction which had been omitted had been observed for a century.<sup>74</sup>

Monroe proposed to take up the subject of impressment informally, but Canning refused utterly to treat of impressment until after the question of the *Chesapeake* had been settled. Canning refusing to treat of the *Chesapeake* in connection with the general subject of impressment, and Monroe refusing to separate the two questions, the negotiations ended. Monroe shortly after returned to the United States, leaving Pinkney as his successor. He found upon reaching home that his popularity had suffered because of the treaty which he had signed, and that the friends of Madison had

<sup>74</sup> Canning to Monroe, Sept. 23, 1807; American State Papers, For. Rel., III., 199-201.

made much capital out of this in promoting Madison's candidacy over him for the presidency.

The British Government now decided to send George Henry Rose as a special minister to America to adjust the differences over the *Chesapeake* affair. This minister was instructed to confine himself to this subject alone and to entertain no proposition respecting the search of merchant vessels. He was further forbidden to enter upon any negotiation for reparation, until the proclamation of the President should be withdrawn.<sup>75</sup>

Rose upon his arrival at Washington urged the importance of the withdrawal of the alleged hostile act of the President upon the grounds that it prejudiced the interests of Great Britain; that it was discreditable to the British flag; and that it resulted in a spirit of ill feeling and retaliation. It might be held, Rose stated, "to affect materially the question of the reparation due to the United States, especially inasmuch as its execution has been persevered in after the knowledge of His Majesty's early, unequivocal, and unsolicited disavowal of the unauthorized act of Admiral Berkeley, his disclaimer of the pretension exhibited by that officer to search the national ships of a friendly Power for deserters, and the assurances of prompt and effectual reparation, all communicated without loss of time to

<sup>75</sup> Monroe to Madison, Oct. 10, 1807; American State Papers, For. Rel., III., 191-193. Rose to Madison, Jan. 26, 1808; American State Papers, For. Rel., III., 213-214.



the minister of the United States in London, so as not to leave a doubt as to His Majesty's just and amicable intentions."<sup>76</sup>

Secretary Madison replied to Rose that the demand of the British Government that the proclamation of the President be revoked before the negotiations for reparation be entered upon might justly suggest the simple answer, that, before the proclamation of the President could become a subject of consideration, satisfaction should be made for the acknowledged aggression which preceded it, and that this was agreeable to the order of time, to the order of reason, and, it might be added, to the order of usage, as maintained by Great Britain, whenever, in analogous cases, she was the complaining party. / The American Government absolutely refused to withdraw the proclamation until the British minister should disclose the exact nature of the reparation which he had been instructed to offer. It was implied that such reparation should include a pledge for the discontinuance of the practice of impressment.<sup>77</sup> The British minister having expressed his inability to comply with the terms of the American Government, the negotiation terminated, and Rose returned home.

<sup>76</sup> Rose to Madison, Jan. 26, 1808; American State Papers, For. Rel., III., 213-214.

<sup>77</sup> Madison to Rose, March 5, 1808; American State Papers, For. Rel., III., 214-217.

Secretary Madison in communicating the result of the Rose mission to Minister Pinkney at London stated that advances to renew the negotiation must be made by the British Government either in London or Washington. If they should be made in London, Pinkney was authorized to accept the reparation offered provided that it involved no condition and included a disavowal of the attack on the *Chesapeake*; the immediate restoration of the impressed seamen; and the punishment of the guilty officers. The reparation, it was added, would be the more acceptable if it included also the restoration of the seamen to the very ships from which they were taken and if provision should be made for the wounded survivors and the families of those whose lives had been lost in the encounter. In case the reparation included the points which were made as an ultimatum it was promised that the proclamation of the President should be revoked. Pinkney was instructed, in the event of satisfactory pledges for reparation for the aggression on the *Chesapeake* and the repeal of the British orders, "to enter into informal arrangements for abolishing impressments altogether, and mutually discontinuing to receive the seamen of each other into either military or merchant service."<sup>78</sup>

Pinkney believed that it would be better that the

<sup>78</sup> Madison to Pinkney, April 4, 1808; American State Papers, For. Rel., III., 221-222.

British Government renew the negotiation relative to the *Chesapeake* in Washington, and recommended that the necessary powers be given to Erskine, British minister in America.<sup>79</sup> The British Government acted upon this suggestion, and authorized Erskine to enter into a special negotiation with the American Government upon the subject of reparation.

Erskine wrote in his note to the Secretary of State that since the British Government had been informed that the United States Congress had shown an intention of placing the relations of Great Britain with the United States upon an equal footing with the other belligerent Powers, his Government had instructed him, in event of such laws being enacted, to offer an honorable reparation for the attack upon the *Chesapeake*. The reparation which he was prepared to propose consisted of a restitution of the men forcibly taken from the *Chesapeake* and a suitable provision for those who had suffered from the aggression, in addition to the disavowal of the act and the recall of the officers which had immediately taken place after the act was committed.<sup>80</sup> The American Government expressed its satisfaction with this offer, but at the same time made it plain that the removal of the non-intercourse act had

<sup>79</sup> Account of unofficial conversation between Canning and Pinkney, Jan. 18 and 22, 1809; American State Papers, For. Rel., III., 299-300.

<sup>80</sup> Erskine to Smith, April 17, 1809; American State Papers, For. Rel., III., 295.

been decided upon from other and distinct considerations.<sup>81</sup>

Upon the success of this negotiation, and in view of the repeal of the non-intercourse act, Erskine informed the American Government that Great Britain purposed sending an envoy extraordinary invested with full powers to conclude a treaty on all the points of dispute between the two countries.<sup>82</sup>

The official note of the American Government containing the acceptance of the proffered reparation concluded with these reproachful words: "I have it in express charge from the President to state, that, while he forbears to insist on a further punishment of the offending officer, he is not the less sensible of the justice and utility of such an example, nor the less persuaded that it would best comport with what is due from His Britannic Majesty to his own honour."<sup>83</sup> The words were considered impertinent and were so deeply resented by the British Cabinet that the negotiations with reference to the *Chesapeake* were broken off and Erskine was severely censured for transmitting a note containing language so discourteous and unbecoming. Erskine was later recalled on the ground of his hav-

<sup>81</sup> Smith to Erskine, April 17, 1809; American State Papers, For. Rel., III., 295-296.

<sup>82</sup> Erskine to Smith, April 18, 1809; American State Papers, For. Rel., III., 296.

<sup>83</sup> Smith to Erskine, April 17, 1809; American State Papers, For. Rel., III., 295-296.

ing departed from his instructions in agreeing to a stipulation for the repeal of the orders in council. He was succeeded by Francis Jackson, who arrived at Washington in October, 1809.

Jackson, in his first formal note to the Secretary of State, made known his powers to renew the offer of reparation made by Erskine.<sup>84</sup> The American Secretary pertinently inquired in what particular his offer differed from the reparation tendered by Erskine and accepted by the United States; and also in what respects the reparation by the former British minister differed from the instructions given to him.<sup>85</sup> Jackson then presented a memorandum containing the conditions on the basis of which he was authorized to draw up an official agreement. This paper stated that, since the President's proclamation had been annulled, the British Government were willing to restore the seamen taken out of the *Chesapeake* except such as might be proved to be natural born citizens of Great Britain or deserters from the British service; and that provision would be made for the families of such as had been killed on the *Chesapeake* provided that no bounty should be extended to the family of any man who had been a natural born subject of Great Britain or a

<sup>84</sup> Jackson to Smith, Oct. 11, 1809; American State Papers, For. Rel., III., 308-311.

<sup>85</sup> Smith to Jackson, Oct. 19, 1809; American State Papers, For. Rel., III., 311-314.

deserter from the service of that country.<sup>86</sup> Such an arrangement being entirely unsatisfactory to the United States, no official notice was taken of it. Jackson's explanation of the disavowal by the British Government of the arrangement made under the negotiation of Erskine was unsatisfactory. His insinuation that the American Government had carried on negotiations with Erskine while knowing that he was exceeding his powers was denied; and upon his reiteration of that insinuation he was informed that no further communication would be received from him. The American minister in London was ordered to request Jackson's recall. This was done by Pinkney, and the British Government finally recalled Jackson after a delay of a year and a half.

For more than a year the government of Great Britain was represented at Washington by a *chargé d'affaires*. The American Government believed that it was the purpose of Great Britain by this action to humiliate the United States. Accordingly, Pinkney left London in February, 1811, and left a *chargé* in the person of John S. Smith to represent the United States there. Great Britain then decided to send a minister to the United States. The person selected was Augustus J. Foster, who arrived in America in June, 1811. Foster was instructed by his Government to make such

<sup>86</sup> Jackson to Secretary of State, Oct. 27, 1809; American State Papers, For. Rel., III., 316.

reparation for the attack upon the *Chesapeake* as the American Government should require, not derogatory to Great Britain. He offered again the disavowal on the part of the British Government of the act of Admiral Berkeley; the immediate restoration of the impressed seamen to the deck of the *Chesapeake*; and suitable pecuniary provision for those wounded and for the families of those slain.<sup>87</sup> The American Government, while intimating its displeasure that the officer responsible for the attack had merely been removed from one command to another, yet accepted the offer and the negotiation was closed.<sup>88</sup>

The general subject of impressment was introduced a few months later when Foster complained to the Secretary of State that certain British seamen deserting from the service had received protection upon American vessels, and that others had been seduced from the British service by American citizens. He expressed the hope that some measure might be discovered to prevent a recurrence of similar acts, and declared his willingness to exert every effort to procure the release from British vessels of any persons claimed as native American citizens. He requested that a list of such be sent him.<sup>89</sup>

<sup>87</sup> Foster to Monroe, Nov. 1, 1811; American State Papers, For. Rel., III., 499-500.

<sup>88</sup> Monroe to Foster, Nov. 12, 1811; American State Papers, For. Rel., III., 500.

<sup>89</sup> Foster to Monroe, April 15, 1812; American State Papers, For. Rel., III., 454.

Secretary Monroe stated in reply to Foster that the deserting British seamen had received no encouragement from the constituted authorities of the United States; that if they had received such encouragement from American citizens it was a cause of regret, but an act not cognizable by American laws. To Foster's offer to secure the discharge of native American citizens when impressed he answered: "It is impossible for the United States to discriminate between their native and naturalized citizens, nor ought your Government to expect it, as it makes no such discrimination itself. There is in this office a list of several thousand American seamen, who have been impressed into the British service, for whose release applications have, from time to time, been already made; of this list a copy shall be forwarded you, to take advantage of any good offices you may be able to render."<sup>90</sup>

June 1, Foster presented to the Secretary of State several papers relating to English seamen claimed to have been detained against their will on board certain ships of war of the United States. This showed, the British minister said, "that it is not on this side of the water alone that the inconvenience necessarily resulting from the similarity of habits, language, and manners between the inhabitants of the two countries, is productive of subjects of complaint and regret. These

<sup>90</sup> Monroe to Foster, May 30, 1812; American State Papers, For. Rel., III., 454.



are, however, at the same time, natural and strong inducements for a conformity of interest, and most particularly for a readiness to give and receive mutual explanations upon all subjects of difference." He stated, in less qualified language this time, that the British Government would continue to give positive orders against the detention of American citizens on board British ships, and that no difficulties, beyond what were necessary for clearly ascertaining the national character of the individuals brought before the Lords Commissioners of the Admiralty, would be interposed to prevent or delay their immediate discharge.<sup>91</sup>

Monroe resented the attempt of the British minister to deduce an analogy between American practice with respect to seamen and the British practice in order to derive a justification for the latter. He contrasted the regulations of the two states as follows: [The United States prohibited the enlistment of aliens into their vessels of war, while Great Britain did not; the United States forbade enlistments or impressments by force, while Great Britain not only practiced that system within her own legal jurisdiction, but had extended it to foreign vessels on the high seas; most of the States in the United States had enacted laws providing for the restoration of seamen deserting from merchant vessels, while Great Britain had made no such provision whatever.] With reference to the assurance

<sup>91</sup> Foster to Monroe, June 1, 1812; American State Papers, For. Rel., III., 459-460.

that the British Government would give orders against the detention of American citizens on board British ships of war, Monroe asserted that if these orders were to prohibit the impressment of seamen from American vessels at sea, they would show a disposition on the part of Great Britain to do justice and to promote a good understanding between the two countries. Should such action be taken the United States would be ready to substitute for the practice the most liberal arrangement on the subject. He maintained that the proposal of the British minister offered objections, in that it gave no assurance for the release of American citizens, except those recognized as such by British officers; and further that it made no provision for the release of aliens. There would be no security against detention inasmuch as it was not sufficient to prove that the seamen taken from American vessels were not subjects of Great Britain or the subjects of the enemy.<sup>92</sup>

Ten days after this note was sent by Secretary Monroe to the British minister, war was declared. In his war message communicated to Congress June 1, Madison presented impressment as one of the justifiable causes for war with Great Britain. He said: "Against this crying enormity, which Great Britain would be so prompt to avenge if committed against herself, the United States have in vain exhausted remon-

<sup>92</sup> Monroe to Foster, June 8, 1812; American State Papers, For. Rel., III., 464.

stances and expostulations."<sup>93</sup> In the report of the committee of the House recommending war, June 2, impressment was mentioned as the principal cause of the war. It said: "While this practice is continued, it is impossible for the United States to consider themselves an independent nation. Every new case is a new proof of their degradation." Its continuance is the more unjustifiable, because the United States have repeatedly proposed to the British Government an arrangement which would secure to it the control of its own people. An exemption of the citizens of the United States from this degrading oppression, and their flag from violation, is all that they have sought."<sup>94</sup>

When, later, it became known that the other main cause of the war, the British orders in council, had been repealed before the announcement of war reached England, the American Government still decided to continue the war, unless the British Government should renounce their practice of impressment. Russell, who became chargé d'affaires upon the departure of Pinkney from London in March, 1811, proposed an armistice, upon the condition that the British Government would relinquish the practice of impressment, on the assurance that the Government of the United States would pass a law prohibiting the employment of British

<sup>93</sup> Richardson, Messages and Papers of the Presidents, I., 499 et seq.

<sup>94</sup> Report of Committee on Foreign Relations, June 3, 1812; American State Papers, For. Rel., III., 567-570.

seamen in the public or commercial service of the United States.<sup>95</sup> The British Government refused, stating that "they cannot consent to suspend the exercise of a right upon which the naval strength of the empire mainly depends, until they are fully convinced that means can be devised, and will be adopted, by which the object to be obtained by the exercise of that right can be effectually secured."<sup>96</sup>

A proposal for an armistice made by Admiral Warren, in September, 1812, was rejected by the American Government because Warren was unable to give any assurance that the practice of impressment by his Government would be relinquished even during the time of the armistice. A similar proposal made by Sir George Prevost, Commander-in-Chief of the British forces in America, was also declined by the President, principally on the ground that it contained no provision for redress against the practice of impressment.

Thus impressment, one of the principal causes for which war was declared, because<sup>95, 96</sup> the sole cause for which it was continued. Twenty years of diplomacy conducted under twelve distinct negotiations and carried on, at times, by the broadest minded statesmen of America and England failed to bring about a satisfactory adjustment of this vexed question.

<sup>95</sup> Russell to Castlereagh, Aug. 24, 1812; American State Papers, For. Rel., III., 589.

<sup>96</sup> Castlereagh to Russell, Aug. 29, 1812; American State Papers, For. Rel., III., 589-590.

## CHAPTER II

### NEUTRAL TRADE

While the uncompromising attitude of Great Britain in her practice of impressment and the abuses of such practice gave the sentimental basis for the second war with England, that which brought the general support of the country to hostile measures was the British aggressions upon American trade. It mattered not whether the British acts were conceived with hostile intent toward the United States in order to thwart the growth of the commerce and naval power of that state, or whether they were merely retaliatory acts upon France, the effects were the same. The United States had from political considerations adopted a policy of neutrality as between the belligerent Powers. When Great Britain and France went to war with each other the commerce of the United States, which was becoming important and profitable, was seriously affected by the various measures of retaliation adopted by the two belligerent states.

The first restrictive acts affecting American trade were those in connection with commerce carried on between the United States and the colonies of the belligerents. The colonial policy of all states in the

18th century was to utilize the colonies for the benefit of the parent state. Colonies were allowed to trade only with the mother-country and her possessions. Before the American Revolution there had grown up a large trade between the United States and the British West Indies. This trade consisted of lumber, live stock, and provisions from the American colonies, which were exchanged partly for molasses and rum, and partly for specie. This was a trade highly beneficial to both parties. When the treaty of peace recognized the independence of the United States, the right of trade with the West Indies no longer belonged to America as a part of the British Kingdom.

Had William Pitt been able to secure the passage of a bill which he proposed in the House of Commons in 1783 a broad foundation would have been laid for an open commercial policy which would have brought lasting peace and harmony between the two countries. His proposed bill would have repealed all statutes of regulation or prohibitions of intercourse which had been enacted. It would have admitted to the ports of Great Britain the ships and vessels of citizens of the United States upon the same footing as before the war. This would not only have placed the United States upon the same footing as other sovereign states, but would have allowed the products and merchandise of American growth or manufacture to be imported into England upon payment of the same duties as

were paid upon the property of British subjects imported in British-built vessels navigated by British natural-born subjects. The bill failed to become a law, and no such favorable commercial arrangement was made for more than thirty years. With respect to trade with the British colonies Pitt's bill was equally liberal, allowing freedom of trade between the United States and these colonies, subject only to the same duties as the same goods would be obliged to pay if they were the property of British subjects and imported in British vessels manned by British seamen.<sup>1</sup>

A vote of censure upon the peace negotiations of 1783 passing the House of Commons caused the resignation of Lord Shelbourne and Pitt. The new Ministry that succeeded, formed by a coalition of Lord North and Charles Fox, demolished the entire system of friendly intercourse with America. Because of lack of unity in the Cabinet the whole regulation of commercial intercourse was committed to the discretion of the King in council.

One of the first results of this act was an order in council which restricted the trade between the United States and the British colonies to a very small number of articles, and forced this to be carried exclusively in

<sup>1</sup> [J. Q. Adams], "Documents from the Department of State, relative to the Colonial Trade," in *American Quarterly Review*, II., 267-306.

British ships. This order was dated July 2, 1783, and was continued by annual acts of Parliament and orders in council until February, 1788, when the prohibitions were made permanent by a statute which took effect April 2 of that year. When the first enactment of these prohibitions was made it was feared by Great Britain that the United States might retaliate, but Congress under the Articles of Confederation did not have the power. Four of the states, however, New Hampshire, Massachusetts, Pennsylvania, and Virginia, did pass discriminating laws against Great Britain. These, naturally, had slight effect. One of the chief reasons for the adoption of the new constitution and the organization of a stronger government lay in the need of a stronger concerted commercial policy against Great Britain. Laws establishing discriminating duties of tonnage and impost were passed by the first Federal Congress in 1789.<sup>2</sup>

These discriminating measures were proposed by Madison, who dwelt with great earnestness upon the importance of teaching those nations which had refused commercial treaties with the United States, particularly Great Britain, to respect the new republic. He expressed his own preference for freedom of commerce, but avowed his determination to meet interdict

<sup>2</sup> [J. Q. Adams], "Documents from the Department of State, relative to the Colonial Trade," in *American Quarterly Review*, II., 267-306.



with interdict "until we should be allowed to carry to the West India islands, in our own vessels, the produce of America, which necessity compels them to take."<sup>3</sup> Madison further believed that the discriminating tonnage duties would aid in the development of a navy and seamen, which he conceived as necessary in view of the maritime dangers. He said: "It is a tax, and a tax upon our produce, but it is a tax we must pay for the national security. I reconcile it to the interest of the United States that this sacrifice should be made; by it we shall be able to provide the means of defence, and by being prepared to repel danger, is the most likely way to avoid it. This tax, therefore, may prevent the horror of a war, and secure to us that respect and attention which we merit."<sup>4</sup>

After the passage of the discriminating impost and tonnage duties, Washington authorized Gouverneur Morris to hold informal conferences with the British Ministry in order to learn whether they were disposed to enter into an arrangement, by mutual consent, which might regulate the commerce between the two nations on a principle of reciprocal advantage. Though no stipulation was obtained from Great Britain, the acts did, to a very satisfactory degree, increase American shipping and add to the commercial prosperity of the United States.

<sup>3</sup> Annals of Congress, 1st Cong., 1st sess., 210.

<sup>4</sup> Ibid., 247.

The first of the long series of executive orders which restricted and eventually almost annihilated American commerce was passed June 8, 1793. This order provided that all vessels laden wholly or in part with breadstuffs for any port in France or place occupied by the French armies might be seized and sent to England, where their cargoes should be disposed of or security given that they should be sold only in the ports of a country at peace with Great Britain.<sup>5</sup> Five months later, November, 1793, a second order directed British commanders to detain neutral vessels laden with the produce of the French colonies and all vessels carrying provisions or other supplies for the use of such colonies. This order claimed to revive the rule adopted in the war of 1756 which declared it unlawful for neutral nations to carry on trade in time of war with the colonies of a belligerent when such trade had been prohibited in time of peace. This order was made the more exasperating by the fact that it was put into force without previous notice being given to American merchantmen.

January 8, 1794, the last order was revoked and replaced by another which directed all vessels to be seized and brought in for adjudication which were laden with merchandise of the French West India Colonies and going from the said colonies to any port in Europe. Vessels laden with merchandise no mat-

<sup>5</sup> American State Papers, For. Rel., III., 264.

ter to what port they were bound were ordered to be seized if the merchandise was the property of a French subject. All vessels attempting to enter the blockaded ports of the said colonies were to be seized as well as all vessels that had on board naval or military stores destined to these ports.<sup>6</sup>

This order was continued until January 25, 1798, when it was replaced by one which ordered all vessels laden with merchandise of any possession of France, Spain, or the United Provinces, and coming from any port of such colonies to any port in Europe not a port of Great Britain or of that country to which such neutral ships belonged, were to be apprehended and brought in for adjudication. In like manner, all vessels having on board enemy's goods, vessels attempting to enter blockaded ports, and vessels having on board naval or military stores were to be seized.<sup>7</sup> March 18, 1794, the French West India islands were declared to be in a state of blockade, and August 18 of the same year the order of June 8, 1793, was revoked. From this time ships laden with foodstuffs were taken without any provision for the purchase of their cargoes being made by the British Government.

The American Congress was in session when the first news reached America of the action of the British assizes and prize courts acting under the orders of

<sup>6</sup> American State Papers, For. Rel., III., 264.

<sup>7</sup> Ibid., 264-265.

November 6, 1793. Great indignation was felt and petitions for redress poured into Congress. Retaliatory measures were urged. President Washington, in order to prevent hostile legislation by Congress, acted promptly and appointed John Jay, Chief Justice of the Supreme Court, as a special envoy to the court of St. James.

Jay was sent to England primarily to seek indemnification for American vessels and goods confiscated under the claim that foodstuffs were contraband, and for injuries sustained and captures made in connection with blockades the existence of which was not yet known in all quarters. A second object of the mission was to draw up an agreement upon all the points of difference between the United States and Great Britain concerning the Treaty of Peace. This task was especially assigned to Jay because he had been one of the signers of the treaty. A third subject mentioned in the instructions was that of a commercial treaty which he was to consider should the first two objects be secured.<sup>8</sup>

Jay arrived in England June 8, and, as soon as possible, entered into negotiations with Lord Grenville. He experienced some delay in the negotiations due to a change in the Ministry.<sup>9</sup> July 30, Jay addressed a

<sup>8</sup> Instructions to Jay; American State Papers, For. Rel., I., 472-474.

<sup>9</sup> Jay to Randolph, July 9, 1794; American State Papers, For. Rel., I., 478-479.

note to Grenville setting forth the American claims for indemnities. He suggested that some less expensive method than the present be adopted by which appeals might be made from the Vice-Admiralty Courts; and that at least all vessels captured might be permitted to enter both their appeals and their claims.<sup>10</sup> Lord Grenville, while replying in a general way, to the effect that His Majesty wished to do the most complete and impartial justice to the citizens of the United States, showed in fact little inclination to grant anything. The cases of persons referred to by Jay, who had previously omitted to prefer claims, Grenville referred to the regular courts of law for settlement; the cases of others who up to the present had made no appeals from the sentences of condemnation in the first instance might be allowed a longer time for preferring their appeals. Apprehending that the cases thus mentioned would form a very considerable part of the injuries alleged to have been suffered by the Americans, he proposed that no definite judgment be expressed upon the remaining cases until the former ones should have been settled in the courts. In very cautious language he went on to say that, "if cases shall then be found to exist to such an extent as properly to call for the interposition of Government, where, without the fault of the parties complaining, they shall be unable,

<sup>10</sup> Jay to Grenville, July 30, 1794; American State Papers, For. Rel., I., 481.

from *whatever circumstances*, to procure such redress, in the ordinary course of law, as the justice of their cases may entitle them to expect, His Majesty will be anxious that *justice* should, at *all events*, be done, and will readily enter into the discussion of the *measures* to be adopted, and the *principles* to be established for that purpose."<sup>11</sup> While the negotiations turned, in the main, to the subject of indemnities, a number of informal interviews took place upon other points, such as the carrying away of negroes contrary to article seven of the Treaty of Peace and the failure of the British to evacuate the military posts in the Northwest.<sup>12</sup> Jay also presented to Grenville a projet of a commercial treaty.

A treaty of amity, commerce, and navigation was finally signed November 19, 1794.<sup>13</sup> Jay believed that in this he had secured all the concessions that Great Britain would make. The treaty was approved by President Washington and, after a long and spirited debate in the Senate, was ratified with the omission of the twelfth article by a bare two-thirds vote. The omitted article permitted direct trade between the United States and the British colonies in the West Indies in vessels not exceeding seventy tons, but ex-

<sup>11</sup> Grenville to Jay, Aug. 1, 1794; American State Papers, For. Rel., I., 481-482.

<sup>12</sup> Jay to Randolph, Sept. 13, 1794; American State Papers, For. Rel., I., 485-487.

<sup>13</sup> Malloy, *Treaties and Conventions*, I., 590-606.

pressly prohibited American vessels from carrying certain articles, the produce of those islands, to any part of the world except to the United States. To consent to such restrictions would have been to deprive the United States of a great part of the advantage which she derived from her position as a neutral state. It was better to run the risk of the trade with the West Indies rather than to suffer such limitations even though protected by treaty.

The other chief provisions of the Jay treaty as affecting trade relations were as follows: American vessels were allowed to trade with British ports in Europe and the East Indies upon the same terms as British vessels; the colonial coasting trade, and trade between European and British East Indian ports, were left subject to the permission of Great Britain; the vessels of Great Britain were admitted to American ports upon the most favorable terms granted to any nation.

The treaty was assailed and its author denounced because, in addition to the fact that it contained no article upon impressment, there was an omission of any provision for the remuneration of slaveholders for their negroes claimed to have been carried away during the war, while, on the other hand, payment was allowed to British citizens for debts contracted before the Revolution. The opposition to the treaty was largely political, and was made by those who were strongly anti-British in feeling and who were ready to condemn the

treaty even before its provisions were made known. Great Britain acceded to the omission of the twelfth article, and ratifications were exchanged in London October 28, 1795.

American trade continued to suffer at the hands of Great Britain, France, and Spain. Neutral vessels were seized by these belligerent nations for having on board goods of the enemy, whether such goods were contraband or not; for trading with ports declared to be under blockade; and for carrying goods claimed to be contraband. In the early years of the war between Great Britain and France, the most serious aggressor was France. The vessels taken by Great Britain were in nearly every case released upon application of the American Government.<sup>14</sup> Seizures of American vessels by British cruisers steadily increased, however, and February 24, 1801, the House of Representatives called for a report upon the depredations committed on the commerce of the United States by vessels of Great Britain of which complaint had been made to the Department of State. Secretary Marshall submitted a report of seventeen cases complained of since January 1, 1800.<sup>15</sup>

American trade with the West Indies particularly suffered, British cruisers seizing American vessels and

<sup>14</sup> Report of Secretary of State, June 21, 1797; American State Papers, For. Rel., II., 28-29.

<sup>15</sup> Report of Secretary of State, Feb. 27, 1801; American State Papers, For. Rel., II., 345-346.



sending them into port. If there were found on board any goods the produce or manufacture of any countries at war with Great Britain, the vessels were condemned. Property on board not belonging to American citizens was either confiscated or held till proofs could be obtained of the citizenship of the owner. The detention and expenses in connection with vessels not found subject to condemnation, as well as the loss of those confiscated, made the trade extremely precarious, and insurance rates advanced from ten to thirty per cent.<sup>16</sup> Secretary Marshall in instructions to Minister King September 20, 1800, complained of the conduct of the British Admiralty Courts, which he declared had made unjust decisions and had failed to inflict penalties upon those captains who made seizures without justifiable causes. The Courts of Vice-Admiralty, it was alleged, whatever might be the case, seldom acquitted, and when they did never awarded costs and damages for detention.<sup>17</sup> The American complaint against the unjust decision of the lower courts was justified by the statement of Lord Hawkesbury, in the House of Commons April 29, 1801, that out of 318 appeals from the Vice-Admiralty Courts only 35 of the condemnations were confirmed by the higher court.

<sup>16</sup> Thomas Fitzsimmons to Secretary of the Navy, Feb. 17, 1801; American State Papers, For. Rel., II., 347.

<sup>17</sup> Marshall to King, Sept. 20, 1800; American State Papers, For. Rel., II., 486-490.

The American minister protested to the British Government against the practice of the Vice-Admiralty Courts of condemning all American vessels bound to an enemy's colony provided they had on board any article the growth or manufacture of a nation at war with Great Britain. This particularly affected the American trade with the Spanish colonies in the West Indies. Minister King was able to secure from the British Government a modified interpretation of the rule of 1756, to this effect: that trade between a neutral and the enemy's colonies was permitted; and that the produce of the colonies of the enemy actually imported into a neutral country might be re-exported thence to any other place, even to the mother-country of that colony which supplied the produce.<sup>18</sup> This opinion of the King's Advocate, having been communicated to the judges of the Vice-Admiralty Courts for their guidance, brought great relief to American vessels; and at once there sprang up a large and lucrative commerce by means of circuitous voyages from the United States to the Spanish colonies, thence returning to the United States, and thence going to Spain and France.

When, by the signing of the treaty of Amiens, 1802, peace ensued between Great Britain and France, the neutral commerce of the United States lost the advantage which it had had during the war. Minister King

<sup>18</sup> Report of the King's Advocate, May 23, 1801; American State Papers, For. Rel., II., 496-497.

at London was urged to secure some relaxation of the British navigation laws, in order that the United States might be placed upon a more equal footing of trade. Particularly was it to be desired that the United States should be allowed to export to the British West Indies certain articles which hitherto had been prohibited; and that the carrying of such articles, as well as of the exports from the West Indies to the United States, should be permitted to American vessels.<sup>19</sup>

The American minister wrote to the Secretary of State, August 10, 1802, that the British Government had consented to the abolition of all discrimination in duties affecting the navigation and commercial intercourse between the United States and Great Britain; but when the bill dealing with duties on exports and imports and the tonnage on vessels was finally passed it was discovered to work even greater hardship to American commerce than that which was produced by the former regulations. With respect to the West India trade, King was unable to secure any positive statement. Lord Hawkesbury said that no decision could be reached until a more careful investigation could be made of the condition of the West India islands.<sup>20</sup>

In the spring of 1803, hostilities between Great

<sup>19</sup> King to Hawkesbury, Feb. 3, 1802; American State Papers, For. Rel., II., 498-500.

<sup>20</sup> King to Secretary of State, Aug. 10, 1802; American State Papers, For. Rel., II., 501-502.

Britain and France broke out afresh, and the measures employed by Great Britain in the last war affecting neutral trade were, in general, renewed by orders in council issued June 24 of that year. One modification was made in this respect, that, while permitting neutrals to carry on trade between their own country and enemy's colonies, and between their own country and that of the enemy in Europe, they were no longer allowed to carry the produce of these colonies to Great Britain as was permitted by the instructions of 1798. Another principle which was now applied was that a vessel upon a return voyage was liable to capture by the circumstances of her having, on the outward voyage, conveyed contraband goods to an enemy's port.<sup>21</sup>

In the renewal of the war France adopted a concerted policy of weakening Great Britain by attacking her commerce. As the ports of Europe gradually became closed to British trade the effects became felt by British merchants, particularly by those of the West Indies. Complaints were made that the hostile colonies through neutral shipping had advantages over the British colonies. A pamphlet published at this time entitled, "War in Disguise," written by James Stephens, advanced the argument that the immense trade which was being carried on under the American flag with the enemies of Great Britain was essentially

<sup>21</sup> Report of Secretary of State, Jan. 25, 1806; American State Papers, For. Rel., II., 728.

an act of war. Demands were made for the re-adoption of the rule of 1756. Pitt proceeded cautiously, fearing that a general war might result from the attempt to establish the rule, and realizing also that Great Britain was in fact materially benefited by the trade, which the West India merchants, with mistaken view, wished to be suppressed. The Lords of Appeal brought about the change in policy, which suited the British merchants. The influence that caused the court to recede from its former decisions was commercial. This change in policy was made in connection with the determination as to what constituted a continuous voyage. In the case of the American ship *Essex*, in May, 1805, it was held by the court that the vessel in question was subject to condemnation on the ground that the continuity of its voyage between the enemy's colony and the parent state was established by the fact that the duties on the cargo when imported to the United States had not been actually paid in money, and therefore the cargo was not a bona fide importation.<sup>22</sup> Previous to this decision the Lords Commissioners of the Appeals Court had held that it was not a continuous voyage if the goods had been landed in the United States and duties had been paid upon them.<sup>23</sup>

<sup>22</sup> Alexander Baring, *An Enquiry on Orders in Council*, page 82.

<sup>23</sup> Robinson's *Admiralty Reports*, II., 368-270. Case of the *Polly*.

The decision with respect to the *Essex*, establishing a change in policy, was not communicated to the American Government, although British privateers and cruisers soon learned of it, and at once busied themselves in apprehending American vessels which had cleared in ignorance of the new principle established by the Court of Appeals. Merchants of New York presented a memorial to Congress, in December, 1805, protesting against the new interpretation that had been placed upon direct trade. They especially complained because the ships had suddenly been seized while they were "confiding in the justice and friendly dispositions of the Government of Great Britain, and entertaining a correspondent expectation that no unusual restrictions would be imposed on neutral commerce without adequate motives and the most ample notice: presuming, especially, that commercial enterprises, commenced under the sanction of established principles, would, on no account, be affected by a change of system." The memorialists denied that the rights of commerce which they claimed were to be deemed as favors from Great Britain, but said that they were based upon the law of nations which recognized the principle "that the goods of a neutral, consisting of articles not contraband of war, in a neutral vessel, employed in a direct trade between neutral countries and ports of a belligerent country, not invested or blockaded, are protected."

The merchants did not wish to leave the impression

that they were appealing for their own financial interests alone. They attempted to play upon the public feeling for seamen's rights with these words: "The constancy and valor of the seamen of the United States are justly themes of patriotic exultation; from their connexion with us we consider their cause as our cause, their rights as our rights, their interests as our interests. Our feelings are indignant at the recital of their wrongs, and we request, in addition to the protection of a naval force, that, at least in the American seas, our brave countrymen may be permitted to display their energy in their own defence."<sup>24</sup> A similar memorial was presented to Congress by merchants of Philadelphia. These memorialists protested not alone against the new enforcement by Great Britain of the rule of 1756 in connection with the doctrine of "continuous voyage"; but they complained even more of the action of France and Spain in allowing American vessels to be seized and confiscated contrary to any established principle of the law of nations and in derogation of special treaty obligations. They urged upon Congress to use every measure, not inconsistent with the honor of the nation, to obtain redress and security.<sup>25</sup>

Monroe in the meantime, in London, complained to

<sup>24</sup> Memorial of Merchants of the City of New York; American State Papers, For. Rel., II., 737-739.

<sup>25</sup> Memorial of Merchants of Philadelphia; American State Papers, For. Rel., II., 740-741.

the British Government of the seizures of numerous American vessels under the rule of 1756, in accordance with which colonial trade denied to neutrals in time of peace was declared illegal in time of war. He also opposed the principle laid down by the British court in the case of the *Essex* and other vessels. He found the British Government unwilling to relax in the slightest degree the doctrine laid down by the decisions of the Admiralty Courts and Court of Appeals, which Monroe asserted had the effect of cutting up by the roots American commerce in the produce of the enemy's colonies except for consumption in the United States. The British Government quite generally freed the American vessels, when complaint was made; but refused to give up the principle upon which the vessels were seized. Monroe, thinking that more serious action might be deemed necessary by the United States, despatched American emissaries, Bowdoin and Erving, to Paris and Madrid, respectively.<sup>26</sup>

Monroe considered that the coalition with Russia and Sweden had affected the British policy upon neutral trade. In her treaty of 1801 with Great Britain, Russia had been compelled to abandon the right to the direct trade between colonies of an enemy and the parent country, and to agree to accept the posi-

<sup>26</sup> Monroe to Madison, Aug. 20, 1805; American State Papers, For. Rel., III., 105.



tion which the United States might hold in that respect.<sup>27</sup>

When Fox became Secretary for Foreign Affairs in the new Cabinet after the death of Pitt, in January, 1806, Monroe was hopeful of a more favorable consideration of American trade. British captures of American vessels had continued, until now the total numbered between one and two hundred. Monroe soon made the discovery that, while Fox was inclined to meet the United States half way, the Cabinet of which he was a member was an inharmonious body, being in fact a coalition, and that, therefore, no agreement favorable to the United States could be expected. Monroe in a letter to the Secretary of State suggested that Congress adopt coercive measures, leaving to the President's discretion putting them into operation.<sup>28</sup>

In one of the interviews between Monroe and Fox, the latter proposed that Great Britain suspend her alleged right, leaving the United States in the enjoyment of the colonial trade. He explained that this would not call upon Great Britain to renounce her rights nor afford the United States justification for pressing her claims. Monroe refused to agree to this plan, which would have meant an abandonment of the

<sup>27</sup> Monroe to Madison, Oct. 18, 1805; American State Papers, For. Rel., III., 106-108.

<sup>28</sup> Monroe to Madison, March 31, 1806; American State Papers, For. Rel., III., 115.

United States claims for indemnities. He refused to compromise.<sup>29</sup>

When instructions were issued to Monroe and Pinkney, who were commissioned to negotiate a treaty with Great Britain, it was declared desirable that the general principle upon the right of neutral trade be laid down; but, if that was found to be impracticable, the commissioners were authorized to abridge the right in practice, as was done in the supplement of October, 1801, to the treaty of June of that year between Russia and Great Britain; "not omitting to provide that, in case Great Britain should, by her treaties or instructions, leave to any other nation the right in a greater extent than it is stipulated to the United States, they may claim the enjoyment of it in an equal extent." The commissioners were instructed to oppose the British theory of "continuous voyage," and to demand as a minimum in the West India trade the admission of American vessels with American goods, which in British vessels were not prohibited, on the same terms on which British vessels laden with colonial produce were admitted to American ports.<sup>30</sup>

The treaty which Monroe and Pinkney negotiated with Lord Holland and Lord Auckland in 1806 contained a provision in relation to colonial trade which,

<sup>29</sup> Monroe to Madison, April 28, 1806; American State Papers, For. Rel., III., 117-118.

<sup>30</sup> Madison to Monroe and Pinkney, May 17, 1806; American State Papers, For. Rel., III., 119-124.

had the treaty been ratified, would have left no room for misunderstanding upon the question of the continuity of neutral voyage. Article eleven of that treaty provided that, during the period of a war, articles which were the growth, produce, or manufacture of Europe might be carried from the United States to the port of any colony, not blockaded, belonging to His Majesty's enemies, provided such goods should previously have been entered and landed in the United States, and should have paid the ordinary duties on such articles and, on re-exportation, should, after the drawback, remain subject to a duty of not less than one per cent. of the value of the goods. In like manner colonial goods might be shipped from the United States to European ports, provided such goods should have entered and landed, paid the ordinary duties, and, upon re-exportation, should have paid a duty of two per cent. *ad valorem*.<sup>31</sup> The levying of a special duty upon re-exportation, particularly upon colonial goods, was to foster competition with American shipping.

This treaty was rejected by the American Government, mainly on two grounds: because it failed to provide any article upon impressment, and because on the subject of colonial trade it restricted to the market of Europe the re-exportation of colonial produce, and to

<sup>31</sup> Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America; American State Papers, For. Rel., III., 147-151.

European articles the supplies to the colonial trade.<sup>32</sup> British cruisers, under the new doctrine of continuous voyage, brought in for adjudication American vessels in large numbers. The British prize courts in some instances held that American vessels trading with France and complying with the French decree, which required the use of certificates of origin in order to bar out goods of British growth or manufacture, were engaged in unneutral service and, therefore, were subject to confiscation.<sup>33</sup>

The causes of complaint in relation to the capture of American vessels were numerous prior to the beginning of the year 1807, but after that date they were vastly multiplied, and constituted, from this time on, the most important factor determining the war between Great Britain and the United States. The system of official orders and decrees, under which neutral rights were disregarded and American commerce was crushed, began when Great Britain, May 16, 1806, in order to attack Napoleon, proclaimed the coast of the Continent from the river Elbe to Brest in a state of blockade. The strict enforcement of the blockade was to extend from Ostend to the mouth of the Seine. Napoleon six months later, November 21, 1806, exulting in his victory at Jena, which brought Prussia into subjection,

<sup>32</sup> Madison to Monroe and Pinkney, May 20, 1807; American State Papers, For. Rel., III., 166-173.

<sup>33</sup> Officers of Insurance Companies to Secretary of State, Dec. 10, 1805; American State Papers, For. Rel., II., 769.

issued a decree from Berlin declaring the British islands under blockade, and prohibiting all trade in English goods. No vessel proceeding to or coming from England, or the English colonies, was to be admitted to any French port.<sup>34</sup> Great Britain, without waiting to learn the effects of this impossible decree, retaliated with an order in council, dated January 7, 1807, which forbade all vessels to engage in the coastwise trade of France and of her allies or of any ports to which British vessels were denied access.<sup>35</sup> Later, alarmed at the success of Napoleon in building up his Continental system, and especially disturbed by the alliance of Russia with France, cemented by the treaty of Tilsit, July 7, 1807, the British Government adopted still stronger measures for retaliating upon Napoleon and for crippling American trade. The order in council promulgated November 11, 1807, ordered a blockade of all ports and places of France, of her allies, and of all countries from which British ships were excluded. All trade in articles produced or manufactured in such blockaded countries was proclaimed unlawful, and vessels engaging in it were subject to capture and condemnation together with the goods. It was further declared that any vessel that carried a certificate of origin

<sup>34</sup> Imperial Decree, Nov. 21, 1806; American State Papers, For. Rel., II., 806.

<sup>35</sup> Howick to Monroe, Jan. 10, 1807; American State Papers, For. Rel., III., 5.

issued by France was to be considered good prize.<sup>36</sup> Another order of the same date permitted neutral vessels to carry goods from the enemy's ports to the ports of Great Britain upon payment of duties, and to re-export from these, subject to British regulations.

The British Cabinet held that the blockade which the Berlin decree proclaimed was in violation of the established law of nations and that in consequence Great Britain was justified in retaliating upon the enemy with a similar interdiction of commerce. The ink had hardly become dry upon the British document when Napoleon replied with a decree issued from Milan, December 17, 1807, declaring that every vessel that should submit to search by an English vessel should thereby become denationalized and hence be lawful prize. The British islands, it was stated, were to be under conditions of blockade, both by land and sea; and any ship sailing from the ports of England or of the English colonies or of the countries occupied by English troops was to be regarded as lawful prize. This decree was in turn declared by Napoleon to be in retaliation upon Great Britain for her transgression of the law of nations. "The provisions of the present decree," it was announced, "shall be abrogated and null, in fact, as soon as the English abide again by the

<sup>36</sup> Order in Council, Nov. 11, 1807; American State Papers, For. Rel., III., 29-31.

principles of the law of nations, which are also the principles of justice and of honor."<sup>37</sup>

The United States refused to acquiesce in any of these orders and decrees, and through both diplomatic and legislative channels sought to make her resistance felt. It is true that the British order creating a blockade from the river Elbe to the port of Brest was not considered especially inimical to the United States. Our minister at London expressed the opinion that the order showed a disposition to consider the needs of the United States in that it put an end to seizures, except within a special restricted blockaded region from Ostend to the mouth of the river Seine, leaving the remaining portion blockaded for purposes of retaliation upon France, but not prohibiting therein the trade of neutrals. The order was at first considered liberal, also, because it allowed neutral trade in the productions of the enemy's colonies in every route except the direct route between the colony and the parent state.<sup>38</sup> Monroe believed<sup>39</sup> that the author of the measure, Charles Fox, had drawn it with a view to meeting the American objection with regard to the restriction upon American trade with enemies' colo-

<sup>37</sup> Imperial Decree, Dec. 17, 1807; American State Papers, For. Rel., III., 290-291.

<sup>38</sup> Monroe to Madison, May 17, 1806; American State Papers, For. Rel., III., 124-125.

<sup>39</sup> Monroe to Madison, May 20, 1806; American State Papers, For. Rel., III., 125-126.

nies. The results of the order later showed that Monroe's optimism was ill founded.

The news of the Berlin decree reached London while negotiations were pending between the American and the British commissioners. It had a marked effect upon the negotiation. The British would have been glad to suspend negotiation until it could be ascertained what attitude the United States would take in regard to the decree. If the United States should submit to a violation of their neutral rights by France, it was held by the British commissioners that it would be impossible for Great Britain to respect them. The British commissioners proposed that the treaty which they agreed upon should be subject to a reservation in respect to its ratification, depending upon the resistance of the United States to the French decree. The American commissioners declared that this was inadmissible. The British Cabinet insisted that, if the American Government did not give the satisfaction they desired, either by suitable assurances before the ratification of the treaty or by its conduct afterwards, the British Government would make a reservation of their rights to counteract the policy of France.<sup>40</sup> The British commissioners, therefore, when offering to sign the treaty, submitted a note which reserved to the British Government the right to adopt retaliatory meas-

<sup>40</sup> Monroe and Pinkney to Madison, Jan. 3, 1807; American State Papers, For. Rel., III., 142-147.



ures against France and affecting neutral commerce, in the event that the United States should acquiesce in the French decree.<sup>41</sup>

The American commissioners, without giving their consent, transmitted the note to their home Government along with the treaty, which, we have seen, was rejected. The promulgation of the order in council in November of the following year, it was claimed by the British Government, was rendered necessary because "countries not engaged in the war had acquiesced in the orders of France." As a matter of fact the United States had not in any proper sense acquiesced in the French decrees. As soon as the American minister at Paris had learned of the Berlin decree he demanded an explanation as to its effects upon neutral nations, and whether American vessels would be seized in the event of their going to or from the ports of Great Britain.<sup>42</sup> The Minister of Marine and Colonies assured Minister Armstrong that the imperial decree made no modifications of the regulations at present observed in France with regard to neutrals or of the convention made between France and the United States, September 30, 1800. He said that seizures contrary to the existing regulations would not be allowed and that American vessels would not be taken because of their going to or

<sup>41</sup> Note from Holland and Auckland, Dec. 31, 1806; American State Papers, For. Rel., III., 151-152.

<sup>42</sup> Armstrong to Minister of Marine and Colonies, Dec. 10, 1806; American State Papers, For. Rel., II., 805.

coming from the ports of England. The regulations set forth in the decree were, in his opinion, domestic in their application.<sup>43</sup>

The American Government was not satisfied with the explanation of the Minister of Marine alone, but desired to have this confirmed by the express authority of the Emperor. Madison, Secretary of State, accordingly directed Minister Armstrong to ascertain whether or not it was the intention of the Emperor to execute the decree in the limited manner explained by the Minister of Marine. Should it appear that the decree was to operate in all its latitude Armstrong was to offer a protest, on the grounds of the principles of public law and the express stipulation of the treaty of 1800. He was to urge, on the supposition that the law was not to be unfavorably interpreted, that the French Government despatch orders to their cruisers in every quarter so as to prevent a construction of the decree favorable to their cupidity.<sup>44</sup>

Armstrong, while apparently unable to secure any unequivocal statement in relation to the decree as a whole, did secure from the French minister, the Emperor still being absent from Paris, certain definite modifications as follows: Vessels leaving ports of the United States before a knowledge of the decree had

<sup>43</sup> Minister of Marine and Colonies to Armstrong, Dec. 24, 1806; American State Papers, For. Rel., II., 805-806.

<sup>44</sup> Madison to Armstrong, May 22, 1807; American State Papers, For. Rel., III., 242.

been promulgated there were not subject to the rule; vessels not coming directly from a British or French port were not subject to the rule; cargoes of vessels coming directly from a British to a French port and offered for entry, on proof that the touching of the ship in England was involuntary were to be sequestered until the proofs offered should have been investigated. The vessels themselves were in any case to go free. This was a modification of the former rule whereby both ships and cargoes were sequestered.<sup>45</sup>

When a month later the Emperor returned to Paris, Armstrong, on two occasions, secured an audience with him. In these interviews Napoleon's design of forming a union of all the commercial states against Great Britain became apparent. One of these audiences occurring just after the attack of the *Leopard* on the *Chesapeake*, Napoleon, referring to the attack, said to the American minister: "This is abominable; they have pretended hitherto to visit merchantmen, and that they had a right to do so; but they even they, have set up no such pretensions with respect to armed ships. They would now arrange it by giving up a right or usage which never existed; but they will arrange it; they are afraid to go to war with your country."<sup>46</sup> Here was evident the desire which Na-

<sup>45</sup> Armstrong to Monroe, July 7, 1807; American State Papers, For. Rel., III., 242-243.

<sup>46</sup> Armstrong to Madison, Aug. 3, 1807; American State Papers, For. Rel., III., 243.

oleon continued to cherish of arraying the United States in war against Great Britain; while Great Britain's policy was no less that of forcing the United States to break with France. A number of American vessels having been seized and brought into Spanish ports under color of a Spanish order issued in conformity to the French decree, the American minister at Paris urged the French Minister of Foreign Affairs to explain the French practice under the decree, as this would regulate the practice in the Spanish prize courts.<sup>47</sup> The French minister, after referring the subject to the Minister of Justice, replied to Armstrong that the Emperor regarded "every neutral vessel going from English ports, with cargoes of English merchandise, or of English origin, as lawfully seizable by French armed vessels."<sup>48</sup>

This disavowal by the French Government of any exception to be made in the treatment of American vessels, followed, as it was soon after, by the confiscation of the principal part of the cargo of the *Horizon*, an American vessel shipwrecked on the coast of France, greatly embarrassed the American Government in its negotiations with Great Britain when it was attempted to prove that the United States had not suffered from the French decree. The confiscation of

<sup>47</sup> Armstrong to Champagny, Aug. 9, 1807; American State Papers, For. Rel., III., 243.

<sup>48</sup> Champagny to Armstrong, Oct. 7, 1807; American State Papers, For. Rel., III., 245.

these goods, openly declared to be in conformity to the decree of November 21, brought forth a strong protest from the American minister as being contrary to treaty obligations and the assurances given earlier with respect to the application of the decree. Armstrong's letter was a cogent, strongly assertive document, which made the British charge that the United States truckled to France utterly groundless.<sup>49</sup>

What the British Government desired most was to bring about an estrangement between the United States and France. War between the United States and France would have been still more pleasing to the British Government. To this end the ministers insisted, practically, upon hostile resistance to the decree of the French Government. The British minister at Washington informed the Secretary of State that it could not be expected that the British Government would permit the commerce of their enemies to be carried on by neutral nations, if they submitted to the prohibition which France had decreed against the commerce of British subjects.<sup>50</sup> Erskine at the same time apprised the American Government of the British order of January 7, 1807, which prohibited all trade between any two ports of the enemy.

<sup>49</sup> Armstrong to Champagny, Nov. 12, 1807; American State Papers, For. Rel., III., 245-247.

<sup>50</sup> Erskine to Madison, March 12, 1807; American State Papers, For. Rel., III., 158.

Secretary Madison replied to Erskine that the American Government considered the British order illegal, unless a genuine blockade were contemplated in connection with each of the ports of the enemy from which neutral commerce was interdicted. He declared that even were the French decree to be enforced in its literal sense, and contrary to the treaty between the United States and France, the British order, being peremptory in its import, and immediate in its execution, might justly be regarded as premature and unfriendly; the uncertainty whether the French decree was to be enforced in the sense in which it was taken, and whether it might not embrace the commerce of the United States, made the British order especially a ground for serious complaint and remonstrance.<sup>51</sup>

The British Foreign Secretary in London complained to the American commissioners there with reference to the failure of the American Government to take effectual steps against the decree of France. In reply to the American note returning the unratified treaty, Canning, October 22, 1807, stated that the United States had not acted with reference to France in such a way as to do away with the reservation contained in the note delivered by the British commissioners at the time of the signing of the treaty.<sup>52</sup> This

<sup>51</sup> Madison to Erskine, March 29, 1807; American State Papers, For. Rel., III., 159.

<sup>52</sup> Canning to Monroe and Pinkney, October 22, 1807; American State Papers, For. Rel., III., 198-199.

statement was to prepare America for the announcement which was to follow in the promulgation of the order in council of November 11, 1807.

When Pinkney was informed of the new order in council he made a vigorous protest against it on the ground of its effect upon American commerce and on the ground that it was uncalled for. He took the position that it was not justified by the Berlin decree, for this, he maintained, was municipal in character, and had made no modification of the regulations as they were then observed in France with reference to neutrals. He asserted, upon the authority of the French Minister of Marine, that the declaration with regard to the British blockade did not at all change the present French laws concerning maritime capture. He had, of course, not learned of the later interpretation of the French Emperor. The American minister maintained that, while the French decree affected neutral commerce but slightly, being limited to neutral ships passing from British ports to those of France and her allies, the British orders in council, on the other hand, annihilated the whole of the public law of Europe in relation to maritime prizes and substituted a sweeping system of condemnation and penalty in its place. He insisted that the United States had not submitted to the French decree, but had done all within its power in the way of protest.<sup>53</sup>

<sup>53</sup> Pinkney to Madison, Nov. 23, 1807; American State Papers, For. Rel., III., 203-206.

The British orders in council, now recognized to have been a mistaken policy, were at the time popular in England. Those who did not understand, and few did, the policy which dictated them, supported them because they had the appearance of vigor suited to a crisis. The peril at the hands of Napoleon was felt to be very great; and unusual and extraordinary efforts were deemed necessary. Some believed that the prohibitive orders would create a pressure upon Napoleon which would compel him to emancipate neutral commerce from restrictions; but it is doubtful whether the British Government were actuated by any motives favorable to neutrals. President Jefferson, learning of the new order in council before official communication was received, urged upon Congress, December 18, the passage of an embargo act. Congress acted promptly, and such a measure was passed December 22. This act resulted in more injury to the United States than to Great Britain or France. January 26, 1808, Minister Pinkney explained to the British Secretary the nature of the embargo act. In the same interview he complained of the hardship to American vessels resulting from the order in council which practically prevented such vessels from returning home, after being warned not to enter a British port.<sup>54</sup> In a subsequent interview, in which was discussed the question of the duty imposed by the order in council upon the re-ex-

<sup>54</sup> Pinkney to Madison, Jan. 26, 1808; American State Papers, For. Rel., III., 206-207.



portation of cotton from British ports, Pinkney obtained little satisfaction with respect to the orders in council. He wrote the Secretary of State that, "although Mr. Canning's manner was extremely conciliatory, not a word escaped him to encourage a hope that the orders of council would be in any degree abandoned."<sup>55</sup>

When the British minister at Washington informed the American Government of the British order in council, he stated that the British Government had great reluctance in thus inconveniencing neutral commerce. This was shown, he said, in the exceptions which had been made especially affecting the United States. Such exceptions were the permission to carry on direct trade between the United States and the colonies of the enemy, which, it was claimed, was a deviation from the old established rule; admission with the privilege of re-exportation of colonial produce of the enemy into the ports of Great Britain when brought from the United States to Great Britain; the issuance of licenses for the importation of flour, meal, all grains, tobacco, and other articles the produce of the soil of America, with the exception of cotton, through the ports of Great Britain to the enemies without payment of duty.<sup>56</sup>

<sup>55</sup> Pinkney to Madison, Feb. 2, 1808; American State Papers, For. Rel., III., 207.

<sup>56</sup> Erskine to Madison, Feb. 23, 1808; American State Papers, For. Rel., III., 209-210.

The Secretary of State, writing to Erskine March 25, complained of the new order in council because it disregarded the remonstrances of the American Government to the order in council of January 7; and the British Government had now added restrictions upon the commerce of a still more serious character. The order, it was stated, was based upon the false assumption that the United States had acquiesced in an unlawful application of the French decree, and that the right of retaliation, accruing to one belligerent against a neutral, through whom an injury is done by another belligerent, is not to have for its measure that of the injury received, but may be exercised to suit the pleasure of the complaining party. The American Secretary denied that the British Government at the time of issuing the second order could have had any knowledge of a single case of the application of the French decree to the commerce of the United States.<sup>57</sup>

The British minister at Washington being unable to grant any satisfaction to the American Government, diplomatic negotiations were transferred to London, where, under the able and experienced Pinkney, it was hoped that repeal of the British orders might be obtained. Pinkney put forth his utmost efforts to secure this result. In accordance with instructions which he had received from Washington, he informed the British

<sup>57</sup> Madison to Erskine, March 25, 1808; American State Papers, For. Rel., III., 210-213.

Government that, if the orders should be revoked, the United States would repeal the embargo act, as far as it affected Great Britain. He said that such action would be more conformable to the objects which the British Government desired, and in accord with justice, for by the repeal of the orders on the part of Great Britain and the suspension of the embargo act by the United States commercial intercourse would be restored, while the embargo in its operation upon France would take the place of the orders in council, unless France consented to repeal her decrees, in which case all the rights of trade would be secured.<sup>58</sup> The American minister expressed the wish that the carrying out of his suggestion might not only remove the immediate obstacle to trade between the two countries, but prepare the way for a satisfactory adjustment of every question important to their future friendship.

The proposal made by the American minister was considered by the British Cabinet, and, after a month's delay, the decision was communicated by Canning. This was in effect that Great Britain could not consent "to buy off that hostility, which America ought not to have extended," to her "at the expense of a concession made, not to America, but to France," and that Great Britain felt herself obliged to adhere to the principle

<sup>58</sup> Pinkney to Canning, Aug. 23, 1808; American State Papers, For. Rel., III., 228.

embodied in the orders in council so long as France adhered to that system by which the retaliatory measures of Great Britain had been occasioned and justified.<sup>59</sup> It was claimed that the embargo act was unjust, for as a measure of redress it should have been directed only at the party which originated the wrong; that if the measure were to be regarded only as a municipal regulation, which affected none but the United States, and with which no foreign state had any concern, then Great Britain had no right to complain, and did not; that under this last view there was no assignable relation between the repeal of the measure of self-restriction by the United States and the surrender by Great Britain of her right of retaliation against her enemies. The Berlin decree, Canning stated, was intended "not merely to check or impair the prosperity of Great Britain, but utterly to annihilate her political existence, through the ruin of her commercial prosperity." In this attempt, the minister maintained, practically all the Powers of Europe had been compelled to assist; and the American embargo, while not so intended, had, nevertheless, come to the aid of the blockade of the European continent at the very time when, if the blockade could have succeeded at all, this interposition of the American Government would have contributed to its success.<sup>60</sup>

<sup>59</sup> Canning to Pinkney, Sept. 23, 1808; American State Papers, For. Rel., III., 231-232.

<sup>60</sup> Ibid.

Canning dwelt upon the seriousness of the British struggle against the "Continental system" of France. He regarded it as important that the system should be broken up through the determination and ability of Great Britain and in no way purchased by any concession; and that, therefore, "no step, which could even mistakenly be construed into concession, should be taken on her part, while the smallest link of the confederacy remains undissolved, or while it can be a question whether the plan devised for her destruction has, or has not, either completely failed, or been unequivocally abandoned."<sup>61</sup> The orders in council, it was admitted, might perhaps be altered to suit new conditions, but not to abate their spirit or impair their principle, in such a way as to combine practical relief to neutrals with a more severe pressure upon the enemy.

The British Foreign Secretary avowed that Great Britain had no less a desire than the United States that the differences between the two countries should be adjusted; that His Majesty the King desired to cultivate the most friendly intercourse with the United States; that the prosperity of the United States was essentially the prosperity of Great Britain, and that the strength and power of Great Britain were not for herself only, but for the world. He expressed the belief that when the adjustments alluded to were made it would afford a "pledge for the continuance of the good under-

<sup>61</sup> Canning to Pinkney, Sept. 23, 1808; American State Papers, For. Rel., III., 231-232.

standing between the two countries, that they will have learned duly to appreciate each other's friendship; and that it will not hereafter be imputed to Great Britain, either on the one hand that she envies American industry as prejudicial to British commerce, or on the other hand that she is compelled to court an intercourse with America as absolutely necessary to her own existence."<sup>62</sup> Great Britain, it was held, would not hesitate to aid in the restoration of the activity of American commerce, and would make any sacrifice for the repeal of the embargo, if that could be done without appearing to deprecate it as a measure of hostility.

The President's proclamation, issued after the attack on the *Chesapeake*, interdicting the public ships of Great Britain from the ports of the United States, was alluded to by Canning as an unfriendly act, especially since Great Britain had offered to remove the cause upon which the measure was founded. This, he said, was "an inauspicious omen for the commencement of a system of mutual conciliation"; and the American minister's omission of any notice of the President's proclamation was in itself a defect in the overture which had been made. Canning concluded his note with the statement that "on this, and every other point in discussion between the two Governments, His Majesty earnestly desires the restoration of a perfect good understanding, and that His Majesty would de-

<sup>62</sup> Canning to Pinkney, Sept. 23, 1808; American State Papers, For. Rel., III., 231-232.

cline no measure for the attainment of that object which should be compatible with his own honor and just rights and with the interests of his people."<sup>63</sup>

In December, 1808, Great Britain modified her order in council to the extent of suspending export duties on articles the growth, produce, or manufacture of any state at amity with her where such articles had been imported into Great Britain directly from a neutral state. Such suspension of duties on exportation was also made applicable to goods which had been or might be condemned as prize.<sup>64</sup> These changes did not meet the American objection, and Minister Pinkney, after receiving information of the alterations, made known to the British Government that the United States required the repeal of the entire system, not a mere modification of this or that order.<sup>65</sup>

During the year the attitude of France in the enforcement of her decrees had been such as decidedly to weaken the position which the United States had taken in her negotiations with Great Britain when discussing the effect of the French decrees upon neutral commerce. In the case of the condemnation of the *Horizon* the American Government still sought an explanation in an extension of municipal law which could not

<sup>63</sup> Canning to Pinkney, Sept. 23, 1808; American State Papers, For. Rel., III., 231-232.

<sup>64</sup> Order in Council, Dec. 21, 1808; American State Papers, For. Rel., III., 240.

<sup>65</sup> Pinkney to Canning, Dec. 28, 1808; American State Papers, For. Rel., III., 240.

strictly be regarded as an infraction of neutral rights, but after the Milan decree was issued, December 17, 1807, it was no longer possible to regard the French decrees in the light of municipal laws, for in this latest order instructions were given and executed which violated not only the stipulations of the treaty of 1800, but also the principles of public law. When the decree became known the American minister in Paris was instructed to make a formal remonstrance in such language as might either bring about a recall of the illegal measure, so far as it related to the United States; or might have the "effect of leaving, in full force, all the rights accruing to them from a failure to do so." If it should be contended that the decree was justified as a retaliatory measure upon Great Britain, at the expense of neutral states, because of the acceptance of the prior measures of Great Britain, it was to be denied that the United States had made any such acquiescence. Retaliation, it was urged, ought not to be enforced at the expense of neutrals, without giving a reasonable time for neutrals to choose between measures against the prior wrong and an acquiescence in both. The copy of the American protestations against British action would prove that the United States had not acquiesced in the British orders; and would also explain the grounds on which the execution of the French order of November, 1806, had been an object of just remonstrance. The French decree was the more objectionable, in that while



the inability of France to enforce it made it only a slight menace, it afforded a pretext for severe retaliation on the part of Great Britain.<sup>66</sup>

A copy of the embargo act was sent to Minister Armstrong, which, he was to explain to the French Government, was an act rendered necessary for the protection of American property and seamen in view of the conduct of France and Great Britain, and was not to be regarded as a hostile measure. The American minister was to point out to the French Government that the duration of the act was not fixed, but that its revocation would follow the repeal of the unjust acts of the belligerents.

The American minister was informed, shortly after the proclamation of the French decree of December 17, that all American vessels brought into French ports would be sequestered until a decision could be made according to the disposition which the Government of the United States should entertain toward Great Britain.<sup>67</sup> The note of the French Foreign Minister containing this statement, when communicated to the American Government, aroused much feeling. It was regarded as presenting to the United States the alternative of acceding to France in her designs against Great Britain, or incurring the confiscation of all Amer-

<sup>66</sup> Madison to Armstrong, Feb. 8, 1808; American State Papers, For. Rel., III., 249-250.

<sup>67</sup> Champagny to Armstrong, Jan. 15, 1808; American State Papers, For. Rel., III., 248-249.

ican property carried into French Prize Courts. Such a proposition, it was maintained, implied that the United States was susceptible to suggestions which no independent and honorable nation ought to entertain. Armstrong was instructed to place the contents of Minister Champagny's note before the French Government, and while letting it be clearly understood that the American Government regarded the tone of the note as most offensive, he was to leave the way open for friendly and respectful explanation. Information regarding the action of Congress in giving power to the President to suspend the embargo act, in whole or in part, was furnished to the American minister, and he was instructed to use his best endeavors to induce France to repeal her decrees. If Great Britain, it was stated, should revoke her orders and thereby prepare the way for the removal of the embargo as it applied to her, France could not persist in her decrees unless she intended to force a conflict with the United States. On the other hand, if France should be the first to set an example of repeal, "Great Britain would be obliged, either by following it to restore to France the full benefit of neutral trade, which she needs, or, by persevering in her obnoxious orders after the pretext for them had ceased, to render collisions with the United States inevitable."<sup>68</sup> Any action that might be taken

<sup>68</sup> Madison to Armstrong, May 2, 1808; American State Papers, For. Rel., III., 252-253.

France was to be at once reported to Minister Pinkney in London and to the State Department at Washington, since each Government had pledged itself to follow the example of the other.

Armstrong acted in accordance with these instructions, but secured no satisfaction from the French Government. In fact, by the issuance of the Bayonne decree by Napoleon, April 22, 1808, the American grounds of complaint against France were greatly increased. This decree authorized the seizure and confiscation of all American vessels then in France or which might arrive there. This was in return for the embargo act which the French minister said made it unlawful for any American vessel to be abroad after the date of its passage. This decree was aimed at those American vessels that were trading under British licenses and forged documents. Secretary Madison said that if the decree was aimed at all American vessels on the high seas demands for reparation would be extended; and that, if war with the United States was to be deprecated, France ought to revoke her decrees, in so far at least as they violated the rights of the seas and furnished a pretext to Great Britain to continue her retaliatory measures.<sup>69</sup> Minister Armstrong found that the embargo act upon which the American

<sup>69</sup> Madison to Armstrong, July 22, 1808; American State Papers, For. Rel., III., 254-255.

Government had counted to coerce Great Britain and France into repealing their obnoxious measures had no effect in securing such a result. Armstrong favored the removal of the embargo. He advised putting in its place a system of armed commerce. Pinkney, on the other hand, after an unsuccessful attempt to persuade Great Britain to repeal her orders, expressed himself strongly in favor of a continuance of the embargo. In a letter to Madison he said: "The spirit of monopoly has seized the people and Government of this country. We shall not, under any circumstances, be tolerated as rivals in navigation and trade."<sup>70</sup>

In January, 1809, the British Government sent instructions to their minister at Washington authorizing him to state to the American Government that the orders in council of January and November, 1807, would be raised with respect to the United States upon three conditions. These were that the United States should remove all its restrictive acts against Great Britain, leaving them in force against France; that the United States should agree to renounce all claims to the colonial trade and acquiesce in the rule of 1756; that Great Britain should be at liberty to capture all American vessels which might attempt to trade with the ports

<sup>70</sup> Armstrong to Madison, Aug. 30, 1808; American State Papers, For. Rel., III., 256. Pinkney to Madison, Sept. 21, 1808; American State Papers, For. Rel., III., 228-230.

of France or other countries acting under the French decrees.<sup>71</sup>

The British minister, conceiving that the all-important thing for his Government was the restoration of free intercourse with the United States, disregarded the specific conditions under which he had been instructed, and proposed the repeal of the orders in council of January and November, 1807, with respect to the United States, provided the President would issue a proclamation for the renewal of intercourse with Great Britain.<sup>72</sup> The Secretary of State on the same day replied, giving assurance that, should the British Government remove the orders in council which were mentioned, the President of the United States would issue a proclamation repealing the non-intercourse act in accordance with the power given him by Congress.<sup>73</sup> Minister Erskine, the following day, informed the Secretary of State that the orders in council would be withdrawn with respect to the United States on the 10th of June next.<sup>74</sup> Thereupon, the Secretary of State announced that the President would accordingly

<sup>71</sup> Canning to Erskine, Jan. 23, 1809; American State Papers, For. Rel., III., 300-301. "Correspondence Relative to America," 9.

<sup>72</sup> Erskine to Smith, April 18, 1809; American State Papers, For. Rel., III., 296.

<sup>73</sup> Smith to Erskine, April 18, 1809; American State Papers, For. Rel., III., 296.

<sup>74</sup> Erskine to Smith, April 19, 1809; American State Papers, For. Rel., III., 296.

repeal the non-intercourse act and renew trade between Great Britain and the United States upon the same date as the removal of the orders in council.<sup>75</sup> The President on the same day issued a proclamation declaring the renewal of the accustomed intercourse between the United States and Great Britain.<sup>76</sup>

The British Government later disavowed the arrangement which Erskine had made, on the ground that their minister had exceeded his instructions; and the President's proclamation, accordingly, was withdrawn, August 9. Erskine was censured for departing from the letter and, more especially, the spirit of his previous instructions. With regard to some of the points of criticism made by Canning it is difficult to see wherein these were covered by instructions given to Erskine, and the objections appear hypercritical, prompted by a determination to make the rejection of the agreement as plausible as possible. Great Britain was apparently more desirous of seeing America at war with France than she was to see her at peace with England.

March, 1809, Congress raised the embargo as to all other nations except Great Britain, France, and their dependencies, and substituted a system of non-intercourse and non-importation against them. This act

<sup>75</sup> Smith to Erskine, April 19, 1809; American State Papers, For. Rel., III., 296.

<sup>76</sup> Proclamation of the President of the United States, April 19, 1809; American State Papers, For. Rel., III., 297.

prohibited all voyages to the British or French possessions and all trade in articles of British or French product or manufacture.<sup>77</sup>

May 1, 1810, a law was passed which provided for non-intercourse alone; and declared that if Great Britain or France should so revoke or modify its edicts before March 3, 1811, as that these should cease to violate the neutral commerce of the United States, and if the other nation should not within three months thereafter in like manner revoke or modify its edicts, the provisions of the non-intercourse and non-importation law should be revived against the nation refusing so to act.<sup>78</sup>

This act was communicated to the American ministers at London and Paris, with the instructions that they present the same to the respective Governments to which they were accredited. The American minister at Paris, upon transmitting the act to the French Minister of Foreign Affairs, received a communication from the French minister in which he declared that, if England would revoke her orders in council, France would revoke her decrees. With peculiar logic he placed the responsibility for securing these results upon the United States.<sup>79</sup> The French Government later

<sup>77</sup> Annals of Congress, 10th Cong., 2d sess., 1824-1830.

<sup>78</sup> Annals of Congress, 11th Cong., 2d sess., 2582-2583.

<sup>79</sup> Champagny to Armstrong, Aug. 22, 1809; American State Papers, For. Rel., III., 325-326.

explained that the revocation of their decrees would follow the previous revocation of the orders in council in chronological sequence.<sup>80</sup> Pinkney in London, being informed by Armstrong of the conditions attached to the repeal of the French decrees, endeavored to persuade the British Government at least to repeal so much of their orders as affected the blockade of French ports prior to the Berlin decree, in order that that decree might in consequence be revoked by France. The American Government considered itself justified in insisting that the British orders anterior to the Berlin decree be first repealed, inasmuch as the British Government had all along contended that the Berlin decree was the original aggressor upon the neutral commerce of the United States.<sup>81</sup> Upon the failure of the American minister to induce the British Government to repeal its earlier orders upon the assurance that France would withdraw the Berlin decree, instructions were given to Pinkney to urge upon the British Government the consideration of the act of Congress of May 1.<sup>82</sup>

While this fruitless negotiation was going on in London, the French Government was planning a cunning scheme to deceive the United States and force her into

<sup>80</sup> Armstrong to Smith, Jan. 28, 1810; American State Papers, For. Rel., III., 326.

<sup>81</sup> Smith to Pinkney, July 2, 1810; American State Papers, For. Rel., 360-361.

<sup>82</sup> Smith to Pinkney, July 5, 1810; American State Papers, For. Rel., III., 362.



hostile opposition to Great Britain. On August 6, 1810, Armstrong received a note from the Duke of Cadore, Minister of Foreign Affairs, announcing that the decrees of Berlin and Milan had been revoked and that they would cease to have effect after November 1 of that year.<sup>83</sup> Armstrong transmitted this information to Pinkney, who immediately communicated it to the British Government with the statement that he should expect that the British orders in council would at once be repealed. The British Ministry refused to believe that the French decrees had in fact been repealed. They gave assurance that "whenever the repeal of the French decrees shall have actually taken effect, and the commerce of neutral nations shall have been restored to the condition in which it stood previously to the promulgation of those decrees, His Majesty will feel the highest satisfaction in relinquishing a system which the conduct of the enemy compelled him to adopt."<sup>84</sup>

President Madison, relying upon the note of the Duke of Cadore that the French decrees had been revoked, issued, November 2, a proclamation in accordance with the act of May 1, declaring that all restrictions upon the commerce of France and her depend-

<sup>83</sup> Cadore to Armstrong, Aug. 5, 1810; American State Papers, For. Rel., III., 386-387.

<sup>84</sup> Wellesley to Pinkney, Aug. 31, 1810; American State Papers, For. Rel., III., 366.

encies should cease from the date of the proclamation.<sup>85</sup> Pinkney was unsuccessful in his efforts to secure the repeal of the orders in council. In a letter to the Secretary of State, December 14, 1810, he expressed his belief that the British Government intended to do nothing. He, therefore, advised that "a very firm tone" be assumed by the United States Government.<sup>86</sup>

The British Government held that the words in the Duke of Cadore's note, announcing the revocation of the Berlin and Milan decrees, implied as a condition to the actual repeal that Great Britain should in consequence of that declaration revoke the British orders in council and renounce their principles of blockade. The words of the French minister following the declaration of the repeal of the decrees had been these: "it being understood that *in consequence of this declaration* the English shall revoke their orders in council, and renounce the new principles of blockade which they have attempted to establish."<sup>87</sup> Another condition, which the British held was implied in the French note, was that the decrees would be actually repealed provided that the United States would resent any refusal of the British Government to renounce the

<sup>85</sup> Richardson, Messages and Papers of the Presidents, I., 481-482.

<sup>86</sup> Pinkney to Smith, Dec. 14, 1810; American State Papers, For. Rel., III., 375.

<sup>87</sup> Wellesley to Pinkney, Dec. 29, 1810; American State Papers, For. Rel., III., 408-409.

new principles of blockade and to revoke the orders in council. The American Government insisted that no conditions had been made, but that the decrees had actually been repealed.

In February, 1811, Lord Wellesley again announced that Great Britain would repeal her orders in council whenever France should actually have revoked the decrees of Berlin and Milan, and should have restored the trade of neutral nations to the condition which prevailed before the promulgation of those decrees. He maintained that the relinquishment of them with respect to the United States alone was not sufficient. The refusal of Great Britain to comply with the request of the United States was especially assigned to the alleged demand by France that the British principles of blockade be renounced.<sup>88</sup> Pinkney now decided to return home, for two reasons; first, his mission had apparently failed, and second, he deemed it expedient to place the diplomatic representation of the United States in London upon the same basis as that maintained by Great Britain in Washington. This was a most unfortunate move, making it impossible now for the differences between the United States and Great Britain to be settled otherwise than by war. Before Pinkney left London the British Government announced the appointment of a minister plenipoten-

<sup>88</sup> Wellesley to Pinkney, Feb. 11, 1811; American State Papers, For. Rel., III., 412.

tiary to the United States in the person of A. J. Foster, former chargé d'affaires in Sweden. Pinkney then hesitated about withdrawing, but upon receiving from Lord Wellesley an absolute refusal to repeal the orders in council he thought it useless to remain longer.

The second of February, being three months after the President's proclamation had been issued announcing the repeal of the French decrees, Great Britain still refusing to repeal the orders in council, the non-intercourse and non-importation law was revived against her. Congress, March 2, 1811, confirmed the action of the President, and authorized him to suspend the non-intercourse and non-importation act with Great Britain whenever that country would revoke her orders in council.

The last negotiations between the United States and Great Britain seeking a peaceful settlement of this difference were carried on in Washington by Secretary Monroe and the British minister, Foster, from July, 1811, to June, 1812. In these discussions Foster justified the British orders on the ground of their necessity as retaliatory measures to counteract Napoleon's attempt to crush British trade. He argued that France was the aggressor in the issuance of retaliatory edicts. He objected to the position of France with reference to blockades, and stated that neither the practice of Great Britain nor the law of nations sanctioned the rule that

no place, excepting fortresses in a complete state of resistance, could be lawfully blockaded by sea. The blockade of May, 1806, he asserted, "was intended to be maintained, and was actually maintained, by an adequate force . . . to enforce the blockade."<sup>89</sup> The strongest argument offered by the British minister in support of the refusal of his Government to repeal the orders in council was the fact that proof was lacking to show that France had really revoked her decrees, that, in fact, there was evidence to the contrary. He showed that an American vessel, the *New Orleans Packet*, had been seized since the decrees were supposed to have been revoked, and further, that the Emperor in a speech to the deputies of the free cities of Hamburg, Bremen, and Lubeck had declared that the Berlin and Milan decrees should be the public code of France as long as England maintained her orders in council of 1806 and 1807.

Secretary Monroe maintained that the British argument of retaliation was unjustifiable, for the retaliatory acts were far in excess of the acts which called them forth, and that besides they fell with the greater effect not upon the commerce of the enemy, but upon that of neutrals; that Great Britain ought, in keeping with her own promise to proceed *pari passu* with the Government of France in the revocation of her edicts,

<sup>89</sup> Foster to Monroe, July 3, 1811; American State Papers, For. Rel., III., 435-437.

immediately to repeal her orders. Monroe held that France had revoked her edicts as far as they violated neutral rights, and upon that ground the United States had a right to expect a similar revocation on the part of Great Britain. He explained the seizure of the *New Orleans Packet* on the ground that it had been merely detained and not condemned; and said that the speech of the Emperor contained nothing incompatible with the revocation of the decrees in respect to the United States, but that it merely enunciated the French policy to cease the French blockade in favor of those nations in whose favor Great Britain should revoke hers or those who should support their rights against her pretension, as France considered the United States would do by enforcing the non-intercourse and non-importation act.<sup>90</sup>

Monroe's position was difficult to maintain, for he knew perfectly well that the French decrees had not ceased to affect neutral vessels, and that American ships were being seized almost daily. "The reports of Minister Serrurier to the French foreign office, of his interviews with Monroe, as revealed by the researches of Mr. Adams in the French archives, are perfect evidence that the administration felt keenly the hypocritical position which it was obliged to assume."<sup>91</sup>

<sup>90</sup> Monroe to Foster, July 23, 1811; American State Papers, For. Rel., III., 439-442.

<sup>91</sup> Babcock, *The Rise of American Nationality*, 44.

When the Emperor was informed of the action of the President in reviving the non-intercourse and non-importation act against Great Britain, he proceeded to admit American cargoes which had been provisionally placed in deposit on their arrival in France. Such cargoes were required, however, to be exchanged for French goods of which two thirds must be silks.<sup>92</sup> All the American vessels that had been sequestered in the ports of France after November 2, 1810, were ordered to be released, and at the same time American vessels carrying only American products and manufacture were admitted. The United States was not satisfied with the response of the French Government, and at once sent a minister plenipotentiary, Joel Barlow, to Paris, July, 1811, to secure more liberal commercial arrangements and especially to present American claims for losses resulting from the enforcement of the French decrees. On May 10, 1812, the American Government was officially informed that the French Emperor, under date of April 28, 1811, had issued a decree definitely repealing the Berlin and Milan decrees and that to the first of the preceding November they were considered as not existing in regard to American vessels. A copy of this decree was communicated to the British Government, May 21.

President Madison called the twelfth Congress in an

<sup>92</sup> Bassano to Russell, May 4, 1811; American State Papers, For. Rel., III., 505-506.

extra session, November 4, 1811, and on the following day presented his third annual message. This message recommended that provision be made to place the United States upon a war footing.<sup>93</sup> Congress proceeded to pass certain measures preparatory to war. Among these were a bill to increase the regular army from ten thousand to twenty-five thousand, and a bill to provide for a volunteer force of fifty thousand men. On April 1, 1812, Congress again passed an embargo act for ninety days. This was a forerunner of the actual war measure which was adopted June 18, 1812.

While Congress was debating the question of war, the British minister and Monroe continued negotiations with respect to the relinquishment of impressment and the repeal of the British orders in council. As late as June 14, the British minister stated again that, if a full and unconditional repeal of the French decrees could be shown, the orders in council would be revoked. This the American Government of course was unable to produce, and so, while the United States had real grievance against France which would have justified going to war with that country as well as with Great Britain, her suffering at the hands of Great Britain was so much greater that she was warranted in declaring war upon that country alone.

The United States had a complaint against Great

<sup>93</sup> Richardson, Messages and Papers of the Presidents, I., 491-496.



Britain in relation to the question of blockade apart from the general orders in council. This was made one of the causes of the war in Madison's war message of June 1, 1812, and repeated in the report of the Committee on Foreign Relations two days later.

As early as 1800 Marshall, then Secretary of State, protested against the English blockade of Dutch ports, on the ground that they were "not effectually blockaded by a force capable of completely investing them." The British in this instance held that if the blockade was generally maintained it was sufficient, and that an occasional absence of a fleet from a blockaded port did not impair it. Marshall conceded that if such absence were occasioned by storm or accident that claim might hold, but not when a fleet was applied only a part of the time to maintain a blockade.<sup>94</sup> A similar protest was made by the United States in 1801, in connection with the attempted blockade of Gibraltar by Spain. Again, in 1803, the American Government protested against the British order of June 17 of that year which declared the islands of Martinique and Guadaloupe in a state of blockade; the question in this case being a lack of previous notification and the fact that the islands themselves, instead of specific ports, were declared blockaded. In a note to the British representative at Washington, Secretary Madison wrote that the United

<sup>94</sup> Marshall to King, Sept. 20, 1800; American State Papers, For. Rel., III., 370-371.

States held such a blockade illegal; that she accepted as a proper definition of a blockade that which Great Britain herself had agreed to in a treaty with Russia in 1801, namely: "That in order to determine what characterizes a blockaded port, that denomination is given only to a port where there is, by the dispositions of the Power which attacks it with ships stationary or sufficiently near, an evident danger of entering."<sup>95</sup> This was the definition which the American Government insisted upon in all the various negotiations carried on with the British Government. All blockades which were not confined to specific ports or places and which were not backed up by a force sufficient to endanger an attempt to enter were regarded as illegal and denominated mere fictitious or paper blockades. The United States also claimed that a notification should be announced in advance, and that individual ships sailing in ignorance of the blockade should be warned before attempting to enter the blockaded port.

The draft of the treaty which, in 1804, Monroe was instructed to present to the British Government contained articles upon blockade which declared that the term "blockaded port" should be applied "only to a port where there is, by the disposition of the Power which attacks it with ships stationary or sufficiently near, an evident danger in entering. . . . It is agreed

<sup>95</sup> Madison to Thornton, Oct. 27, 1803; American State Papers, For. Rel., III., 361-362.

that no vessel sailing from the ports of either [party] shall, although cleared or bound to a blockaded port, be considered as violating in any manner the blockade, unless on her approach towards such port she shall have been previously warned against entering the same."<sup>96</sup> In the instructions given to Monroe and Pinkney May 17, 1806, Madison urged the importance of securing from the British Government an agreement upon the question of blockade. He dwelt especially upon the point of notification. In the proposed treaty which was signed by Monroe and Pinkney with Lord Holland and Lord Auckland, provision was made with reference to notification of vessels, similar to that contained in the Jay treaty of 1794; but no statement relative to the definition of blockade was given. This was one of the objections made by President Jefferson<sup>97</sup> to the proposed treaty. After its rejection by the President, the American ministers attempted to secure an article upon blockade exactly like the one included in the draft of the treaty proposed in 1804.<sup>98</sup> Inasmuch as the Monroe-Pinkney negotiations upon all subjects failed, no advance was made on the subject of blockade.

In connection with the British order in council of

<sup>96</sup> Convention between the United States and Great Britain; American State Papers, For. Rel., III., 82-83.

<sup>97</sup> Madison to Monroe and Pinkney, May 20, 1807; American State Papers, For. Rel., III., 166-173.

<sup>98</sup> Monroe and Pinkney to Canning, July 24, 1807; American State Papers, For. Rel., III., 194-196.

May 16, 1806, the United States held that Great Britain attempted to establish a blockade contrary to the usages of nations, and this became a subject of discussion in all the subsequent negotiations over the orders in council. Great Britain insisted that it was a legitimate blockade which she was able to maintain with an adequate force.

## CHAPTER III

### DECLARATION OF WAR AND PEACE PROPOSALS

The negotiations of three administrations failing to remove the causes of grievance of the United States against Great Britain, the war cloud which had long been upon the horizon now drifted nearer. If the United States, prior to the declaration of war, had been represented at the court of St. James by a minister plenipotentiary of the ability of Albert Gallatin, instead of by a mere chargé d'affaires in the person of Jonathan Russell, it is possible that the war might have been averted; but, under the circumstances, there was much justification for the position of the ruling party at Washington, that the honor and independence of the United States were involved and that nothing short of war would now avail. Though there were undoubtedly sufficient reasons for war, not only with Great Britain, but also with France, they all would have disappeared upon the restoration of peace between those two countries.

The question of war with Great Britain was not settled wholly upon the grounds of justice or expediency. It became, fundamentally, a party issue. The Democratic party, constitutionally averse to Great

Britain, and seeing in the sentimental causes of the war an opportunity to appeal to the popular imagination, became pronounced for war; while the Federalist party, being friendly to England, and located largely in the commercial States, which would suffer most from the operation of the war, vigorously opposed it. The war passion of the Democrats was especially aroused by the presentation to Congress by the President of a message, on March 9, 1812, in which he brought charges against Great Britain of attempting to sever the New England States from the Union and to annex them to her own possessions.<sup>1</sup> Transmitted with the message were letters containing the correspondence of John Henry, who, in a spirit of spite for having been insufficiently rewarded, had made known a mission, which he had undertaken to New England in 1809 at the instigation of the Governor-in-Chief of Canada, to investigate the state of affairs and political feeling in the East. The British Government denied having had any connection with the Henry mission. No evidence was adduced from the papers or from Henry's testimony before the Committee of Foreign Affairs to prove that any plan of secession had been contemplated by the New England States. The Federalists claimed that the entire affair had been trumped up by Madison to augment the war feeling,

<sup>1</sup> Richardson, Messages and Papers of the Presidents, I., 498.

and evidence was produced to show that the President had paid \$50,000 for the papers.<sup>2</sup>

On April 4, Congress passed its last hostile act short of war. This was another embargo act, which, as its supporters openly declared, was preparatory to war. This measure, as in the case of the previous retaliatory measures, affected American interests much more disastrously than it did French or English.

All other efforts proving without avail, and urged on by the young but popular leaders of his party, most prominent of whom were the South Carolina representatives, Calhoun, Cheves, and Lowndes, Madison, at last, on June 1, 1812, sent a message to Congress in which in vigorous language he discussed the various grounds for war against Great Britain. He gave as justifiable reasons for a declaration of war, impressment, violation of the rights and peace of the American coasts by British cruisers, illegal blockade, and the British orders in council.<sup>3</sup>

The House of Representatives referred the message to the Committee on Foreign Relations; and, on June 3, the report of the committee was presented to the House, convened in secret session, by John C. Calhoun, in the absence of Porter, the chairman of the committee. Historians generally have attributed the

<sup>2</sup> Baltimore Federal Republican, March 19, 1812.

<sup>3</sup> Richardson, Messages and Papers of the Presidents, I., 499 et seq. American State Papers, For. Rel., III., 405-407.

authorship of this paper to Calhoun, but the discovery and publication of the Crallé papers by Gaillard Hunt has at least thrown doubt upon the commonly accepted view.

These papers, published by Mr. Hunt in the *American Historical Review* for January, 1908, contain letters from Gales, the editor and proprietor of the *National Intelligencer* from 1810 to 1860, to Richard K. Crallé, the friend and literary executor of John C. Calhoun. According to these letters, Monroe, Secretary of State, was the author of the war manifesto, and not Calhoun. Gales stated in evidence of this that the report was in the handwriting of Monroe's private secretary and confidential clerk; that the select committee had the subject referred to them at the close of the day's sitting June 1, and reported at the opening of the session June 3 and, therefore, had not time in the interval to have prepared such an exhaustive report; and that the report was similar in style to the President's message, which showed that the sources of the two documents were closely allied. Gales attributed the more vigorous attitude taken by President Madison in his message of November 5, 1811, to the influence of Monroe, who, a few months before, had been added to the Cabinet. Gales believed that the Committee on Foreign Relations, being composed of many young and inexperienced men, consulted Monroe upon foreign affairs and that, when the President's message was referred to



them, they prevailed upon the Secretary of State, as being more fully possessed of the facts and merits of the questions, to prepare the report. It was an elaborate manifesto filling ten or twelve ordinary pages, and contained language which Gales said no one who had ever heard Monroe discourse upon the subject could doubt was his.<sup>4</sup>

The report of the Committee on Foreign Relations reviewed the history of the British acts of aggression and of the unsuccessful negotiations to adjust the differences between the two countries. In addition to impressment and violation of neutral commerce as reasons for war, there were added the attempt to dismember the Union, and the inciting of the Indians to arms against the United States. The report concluded with the following appeal to the sentiment of the nation: "Your committee believing that the free born sons of America are worthy to enjoy the liberty which their fathers purchased at the price of so much blood and treasure, and seeing in the measures adopted by Great Britain a course commenced and persisted in which must lead to a loss of national character and independence, feel no hesitation in advising resistance by force, in which the Americans of the present day will prove to the enemy and to the world, that we have not only inherited that liberty which our fathers gave us,

<sup>4</sup> Gaillard Hunt, "Joseph Gales on the War Manifesto of 1812," in *American Historical Review*, Jan., 1908.

but also the will and power to maintain it. Relying on the patriotism of the nation, and confidently trusting that the Lord of Hosts will go with us to battle in a righteous cause, and crown our efforts with success, your committee recommend an immediate appeal to arms."<sup>5</sup>

A bill declaring war, drawn by William Pinkney, Attorney-General, was introduced into the House of Representatives by Calhoun. After a lengthy debate in the Committee of the Whole the following day, the bill passed the House by a vote of seventy-nine to forty-nine.<sup>6</sup>

In the Senate the measure was discussed in secret session for several days, and was finally passed with slight amendment on June 17.<sup>7</sup> The vote stood nineteen for and thirteen against the bill. The vote in both houses represented almost precisely the party division. This division was sectional as well as political, the agricultural States of the West and South favoring the war, the commercial States of the North, and particularly the East, voting against it. The South favored war because the British orders affected the cotton trade most seriously. The bill passed the House

<sup>5</sup> Calhoun's report for the Committee on Foreign Relations to the House of Representatives, June 3, 1812; American State Papers, For. Rel., III., 567-570.

<sup>6</sup> Annals of Congress, 12th Cong., 1st sess., 1637.

<sup>7</sup> *Ibid.*, 297.

as amended by the Senate, and, on the 18th, was sent to the President, who signed the act the same day. The following day he issued the war proclamation.<sup>8</sup>

The Federalist party, having opposed the Government in all its previous acts designed to secure redress without war, and having said that the Government could not be "kicked into war," now opposed the act of war itself. They asserted that the Administration took this action merely to continue itself in power.<sup>9</sup> It was claimed that the war was directed by the South and West against the commercial section of the country.<sup>10</sup> The House of Representatives of Massachusetts published an address to their constituents which was distributed widely. New England assumed an attitude of passive resistance to the war, furnishing neither men nor money to any considerable extent. This was the policy advocated by the leaders of the Federalist party.<sup>11</sup>

The Governors of Massachusetts and Connecticut denied that the Federal Government had the power to make a draft upon the state militia for carrying on a war which had in view no one of the three constitutional objects, namely, "to execute the laws," "to sup-

<sup>8</sup> Richardson, Messages and Papers of the Presidents, I., 512-513.

<sup>9</sup> N. Y. Evening Post, June 15, July 1, 1812.

<sup>10</sup> Boston Weekly Messenger, June 26, 1812; Jan. 14, 1813.

<sup>11</sup> Ibid., July 3, 1812.

press insurrection," and "to repel invasion." The President feared to press the matter to its logical conclusion, and the difficulty was partially removed by allowing the militia to remain under state officers. The opposition of the Federalists hampered the Administration throughout the war.<sup>12</sup> In Massachusetts, where the Federalists were the strongest, petitions and remonstrances, from town after town, were sent to Congress; and the state legislature passed a "memorial" denouncing the Administration and declaring the war "improper," "impolitic," and "unjust." This remonstrance was presented to Congress June 14, 1813.<sup>13</sup> Memorials objecting to the war poured into Congress from nearly every town in New England and from many outside of that section. A large mass-meeting held in Faneuil Hall, Boston, July 15, 1812, adopted a series of resolutions maintaining the right of public discussion of and individual expression on the war policy. The clergy of all denominations generally pronounced against the war, declaring it cruel and unprovoked. To such length was the opposition carried that in Massachusetts, when the public funeral of Captain Lawrence of the *Chesapeake* occurred, the state officers and other leading Federalists refused to attend. The victories of the war were either belittled or entirely

<sup>12</sup> Boston Weekly Messenger, June 4, 1813; May 21, 1813; Jan. 7, 1814. Salem Gazette, Jan. 11, 14, 18, 25, 1814. N. Y. Spectator, April 22, 1814.

<sup>13</sup> Boston Weekly Messenger, June 18, 1813.

passed over by the Federalist press. This was the attitude taken by the Senate of Massachusetts in 1813, when it passed the following resolution: "Resolved, as the sense of the Senate of Massachusetts, that, in a war like the present, waged without justifiable cause, and prosecuted in a manner which indicates that conquest and ambition are its real motives, *it is not becoming a moral and religious people to express any approbation of military or NAVAL exploits, which are not immediately connected with the defense of our sea-coast and soil.*"<sup>14</sup>

A fair example of the tone and spirit of the Federalist party throughout the war is given in the following extract from the Boston Weekly Messenger, one of its leading papers: "Will you lowly bow the suppliant knee to an administration which is, in every particular sense your *enemy*; whose profligate profusion is involving you and your posterity in a redeemless debt of countless millions; who has already *disgraced*, and are rapidly proceeding to *ruin* your country?"<sup>15</sup> This paper, even as late as September, 1814, kept up its bitter attack, and declared that the causes of the war sprang from the following sources: "*First*—To gratify ancient hatred against G. Britain, and to assist the French in subduing the English. *Secondly*—To give that tone and strength to the Madisonian government,

<sup>14</sup> National Intelligencer, June 26, 1813.

<sup>15</sup> Boston Weekly Messenger, April 1, 1814.

which might naturally be expected to arise out of a state of war. *Thirdly*—To silence those men who had opposed the Jeffersonian and Madisonian course of policy, and to command their wealth for the purpose of keeping them still. *Fourthly*—To take the chances of the events which might arise out of this new state of things, and from the noise, excitement and acclamation of successful war, probably to establish, by the help of arms, a government not unlike that of Bonaparte. *Fifthly*—To satisfy the people as to all the expenses and sacrifices which might arise, by conquering the Canadas, and making a great outcry as to our gains and glory.”<sup>16</sup> The Boston Gazette, one of the most violent of the Federalist papers, employed these words: “Is there a Federalist, a patriot, in America, who conceives it his duty to shed his blood for Bonaparte, for Madison or Jefferson, and that Host of Ruffians in Congress who have set their faces against the United States for years, and have spirited up the brutal part of the populace to destroy us? Not one; shall we then any longer be held in slavery and driven to desperate poverty by such a graceless faction! Heaven forbid!” The Democratic papers in equally extravagant and partisan language strove to add fuel to the war flame, and to overwhelm their adversaries with invective.<sup>17</sup>

<sup>16</sup> Boston Weekly Messenger, Sept. 16, 1814.

<sup>17</sup> National Intelligencer, July 28, 1812. Philadelphia Aurora, June 8, 16, Aug. 19, 1812.

The declaration of war caused a great sensation in Great Britain. It brought forth bitter denunciations from Government and press. It was claimed that the United States had seized the opportunity of attacking Great Britain at the precise moment when all her energies were taxed to the utmost in the struggle with Napoleon. Holding, as the British did, that the policy against which the United States protested was essential to the maintenance of British naval supremacy, it was natural that they should consider the action of the United States unwarrantable. Not all, however, took this position. The Liverpool Advertiser considered Madison's message "one of the ablest state papers which ever issued from the American Government," and said that it made out a strong case against Great Britain "on the received principles of public law and international justice."<sup>18</sup> The Edinburgh Review, one of the most influential periodicals of the time, criticized severely the policy of Great Britain toward the United States, and characterized the orders in council not only as odious and unfriendly to the United States, but as constituting an "everlasting stain on the character and policy of our country."<sup>19</sup> This periodical, in common with the more liberal British sentiment, regarded Great Britain's right to impress as undeniable, but her practice of that right as immoderate and unjust.

<sup>18</sup> Liverpool Advertiser, August 8, 1812.

<sup>19</sup> Edinburgh Review, Nov., 1812.

The people in general throughout Great Britain had little knowledge of the real conditions in the United States, and their friendship for Americans was slight. The Edinburgh Review said that the Americans were "less popular and less esteemed among us than the base and bigotted Portuguese, or the ferocious and ignorant Russians."<sup>20</sup> There was, however, one element in the British population that sincerely regretted the war. This was the British manufacturers. Their influence in the direction of peace later became potent.<sup>21</sup>

The American Government, in declaring war, entertained the hope that Great Britain would remove the causes of grievance sooner than take up arms against the United States. In order to provide such an opportunity the Secretary of State, soon after the declaration of war was proclaimed, empowered Jonathan Russell, *chargé d'affaires* at London, to arrange an armistice between the two states, on condition that the orders in council were repealed and orders given for the discontinuance of the practice of impressment of seamen from American vessels together with the restoration of those already impressed.<sup>22</sup> The purpose of the armistice was to secure a cessation of hostilities, pending negotiations for treaty arrangements

<sup>20</sup> Edinburgh Review, Nov., 1812.

<sup>21</sup> *Ibid.*

<sup>22</sup> Monroe to Russell, June 26, 1812; American State Papers, For. Rel., III., 585-586.



upon the subjects in dispute. Russell was instructed to assure the British Government that, in return for a discontinuance of the practice of impressment, a law would be passed by Congress prohibiting the employment of British seamen in the public or commercial vessels of the United States. Such a law, however, was to be reciprocal as well on the part of Great Britain. Acting under these instructions on August 24, Russell proposed to the English Government an armistice<sup>23</sup> subject to the terms specified by Secretary Monroe. Lord Castlereagh replied that the terms were inadmissible, and declined to enter into discussion with Russell, claiming that Russell had no adequate power to negotiate. He rejected utterly the proposal that Great Britain relinquish the practice of impressment on the assurance that a law would be passed by Congress to prohibit the employment of British seamen on the public and merchant vessels of the United States. Great Britain was willing, said Lord Castlereagh, "to receive from the Government of the United States, and amicably to discuss, any proposition which professes to have in view either to check abuse in the exercise of the practice of impressment, or to accomplish, by means less liable to vexation, the object for which impressment has hitherto been found necessary; but they cannot consent to suspend the exercise of a right upon

<sup>23</sup> Russell to Castlereagh, Aug. 24, 1812; American State Papers, For. Rel., III., 589.

which the naval strength of the empire mainly depends, until they are fully convinced that means can be devised, and will be adopted, by which the object to be obtained by the exercise of that right can be effectually secured."<sup>24</sup>

In the interval between the sending of his note to the British Government and the receipt of the reply from Castlereagh, Russell had received a second despatch<sup>25</sup> from his Government. This contained instructions which differed slightly from the previous set. They allowed an armistice to be agreed to without a formal declaration on the points at issue. A clear and distinct understanding upon those subjects was declared sufficient. Russell, upon the basis of the new instructions, made another attempt to arrange an armistice, on the terms that the discontinuance of the practice of impressment should begin simultaneously with the operation in the United States of the law prohibiting the employment of British seamen;<sup>26</sup> but the British Government found this proposal no less objectionable than the former, and refused<sup>27</sup> to consent to an armistice on such terms. The difficulty of coming

<sup>24</sup> Castlereagh to Russell, Aug. 29, 1812; American State Papers, For. Rel., III., 589-590.

<sup>25</sup> Monroe to Russell, July 27, 1812; American State Papers, For. Rel., III., 586.

<sup>26</sup> Russell to Castlereagh, Sept. 12, 1812; American State Papers, For. Rel., III., 591.

<sup>27</sup> Castlereagh to Russell, Sept. 18, 1812; American State Papers, For. Rel., III., 592.

to a clear understanding upon the subjects of impressment, the discharge of impressed seamen, and blockades, which Russell had proposed, was too great to be imposed as a condition of an armistice. The negotiations were broken off, and Russell in great displeasure left London. Before leaving he had a private interview with Castlereagh, in which the latter assured him of the utter impossibility of the British Government's agreeing to give up the right of impressment.<sup>28</sup> With the departure of Russell from London the only representative of the United States left in the capital was R. J. Beasley, who acted as the American agent for prisoners of war.

The British orders in council, which formed one of the principal causes of the war, as stated in Madison's message to Congress on the first of June, were revoked, as far as they affected American vessels, on the 23d of June. This action was taken before the proclamation of war had reached England. The orders in council were recalled because of the disastrous effect which they had upon English manufactures, not on account of a desire to favor the United States. An inquiry, voted by the House of Commons, as to the effects of the orders in council upon business in England had resulted in the passage of a resolution of Parliament requesting the Prince Regent to repeal the orders.

<sup>28</sup> Russell to Secretary of State, Sept. 17, 1812; American State Papers, For. Rel., III., 593-595.

This revocation was accomplished with the reservation "that nothing in this present order contained shall be understood to preclude His Royal Highness the Prince Regent, if circumstances shall so require, from restoring, after reasonable notice, the orders of the 7th of January, 1807, and the 26th of April, 1809, or any part thereof, to their full effect, or from taking such other measures of retaliation against the enemy as may appear to His Royal Highness to be just and necessary."<sup>29</sup> A further condition of the revocation of the orders was that the Government of the United States should remove all restrictions upon the public and private vessels of Great Britain entering the ports of the United States.

Since the war had been declared before the news of the order of the 23d of June reached the United States, the British Government felt confident that, upon the receipt of the news, the Government of the United States would be disposed to recall its declaration of war. Accordingly, Admiral Warren, commanding the British fleet in American waters, was instructed by his Government to propose an armistice to the American Government. Warren, therefore, directed a despatch to the Secretary of State at Washington, informing him of his power to agree to a cessation of hostilities. He proposed that the United States "instantly recall their letters of marque and reprisal against British ships,

<sup>29</sup> American State Papers, For. Rel., III., 433.

together with all orders and instructions for any acts of hostility whatever against the territories of His Majesty or the persons or property of his subjects;" with the understanding that, as soon as this should be done, orders of a like nature would be issued by him to all British officers "to desist from corresponding measures of war against the ships and property of the United States." He wrote that, upon agreement of a cessation of hostilities, he was authorized to make arrangements for the revocation of the laws which interdicted the commerce and ships of war of Great Britain from the harbors and waters of the United States, and that in default of such revocation, after such time as might be agreed upon, in accordance with the order of the 23d of June the orders in council of January, 1807, and April, 1809, would be revived.<sup>30</sup>

Secretary Monroe replied that the President would be very glad to make arrangements to terminate hostilities "on conditions honorable to both nations." Such terms, it was stated, were the same as had been already offered by Russell at London, and had been refused by the British Government. The suspension of the practice of impressment by Great Britain pending an armistice, on consideration that the United States provide by law for the exclusion of British seamen from American vessels, was insisted upon as the first

<sup>30</sup> Warren to Monroe, Sept. 30, 1812; American State Papers, For. Rel., III., 595-596.

condition to a cessation of hostilities. "Experience has evinced," said Monroe, "that no peace can be durable unless this object is provided for."<sup>31</sup> The Secretary added that, if Great Britain was willing to enter into negotiations upon the subject of impressment, but unwilling to suspend the practice during an armistice, the United States stood ready to treat without an armistice. Admiral Warren, however, refused to commit his Government to the relinquishment of the alleged right of impressment, and the negotiations with regard to an armistice ceased.

The Administration was criticised by the Federalist party for its refusal to accept the British offer of an armistice; but since impressment was now made the chief cause of the war, the demand that impressment should cease during the period of the armistice was but reasonable.

The next attempt to secure peace came from Russia a year later. In a contest with so formidable a Power as Great Britain the United States had felt the need of the friendship of the other European states. To this end it had directed its various representatives at foreign courts to use their best efforts to cultivate the friendship of the respective states to which they were accredited. Russia and the other Baltic Powers, it was believed, would especially sympathize

<sup>31</sup> Monroe to Warren, Oct. 27, 1812; American State Papers, For. Rel., III., 596-597.

with the United States in its struggle for maritime rights against the far-reaching claims of Great Britain. This confidence was somewhat shaken when Russia joined herself as an ally with Great Britain in the Napoleonic conflict; yet the most cordial relations still continued to exist between the United States and the Empire of the Czar. The United States, fortunately, had appointed three years before, to represent it at the Court of St. Petersburg, one of its ablest statesmen and most learned diplomats, John Quincy Adams. The Russian Government, upon learning through the British minister of the declaration of war by the United States, in order to render a supposed service to her ally, Great Britain, and to strengthen the ties of friendship with the United States, and, as well, to guard her important export trade, at once offered informally to the ministers of the United States and Great Britain a proposal of mediation on the part of the Russian Emperor.<sup>32</sup>

Adams, immediately upon the receipt of the despatch of July 1, 1812, from Secretary Monroe, apprising him of the war and instructing him in his diplomatic duties in connection therewith, sought an interview with Count Romanzoff. In this interview, in accordance with his instructions,<sup>33</sup> Adams assured the Russian Chancellor of the desire on the part of the

<sup>32</sup> Adams to Secretary of State, Sept. 30, 1812; American State Papers, For. Rel., III., 625.

<sup>33</sup> Monroe to Adams, July 1, 1812; American State Papers, For. Rel., III., 625.

Government of the United States that the war with Great Britain should be confined to that Power alone, and further, that the Government of the United States had no intention of entering into any closer relation with France than that which then existed. The Chancellor expressed his pleasure with the statements of Adams, especially that which referred to the relations of the United States with France. The next day Count Romanzoff sent for Adams and showed him a draft of a note which he had drawn up embodying the statement of the American minister. This note he proposed, with Adams's consent, to send to Count Lievin, the Russian Ambassador at London, with the instruction that he should impart the substance of the same to Lord Castlereagh, and "use it for the purpose of convincing the British Government of the error in suspecting that of the United States of any subserviency to France." Adams readily gave his consent to the sending of this despatch, as he believed with Romanzoff that the communication might tend to promote a spirit of pacification in the British Cabinet. He, however, expressly stipulated that in giving his consent he acted merely in a personal capacity and not under authority of the Government of the United States.<sup>34</sup>

Count Romanzoff assured Adams that the Emperor

<sup>34</sup> Adams to Monroe, Dec. 11, 1812; American State Papers, For. Rel., III., 626-627. MS., Dept. of State, Bureau of Indexes and Archives, Russian Despatches, II., No. 102.



was very desirous that peace should intervene between the United States and Great Britain, both for the sake of these states themselves and for the interests of his own empire. The American minister at this time endeavored to find out whether the British authorities had indicated their acceptance or rejection of the mediation offered by the Emperor. Romanzoff replied "that, without accepting or rejecting it, they had intimated the belief that it would not be acceptable in America."<sup>35</sup> The knowledge of Russia's offer of mediation reached the Department of State, March 7, 1813, through letters from Adams dated September 30 and October 17, 1812.<sup>36</sup> On the following day, March 8, 1813, similar information was presented by Count Daschkoff, the Russian chargé d'affaires at Washington, who, in a note to the Secretary of State, communicated officially the offer of the Emperor to act as a mediator between the United States and Great Britain.<sup>37</sup>

At the time that the proposal was received, there were several circumstances which rendered the offer

<sup>35</sup> Adams to Monroe, Dec. 11, 1812; American State Papers, For. Rel., III., 626-627. MS., Bureau of Indexes and Archives, Russian Despatches, II., No. 102.

<sup>36</sup> Adams to Monroe, Sept. 30, 1812; American State Papers, For. Rel., III., 625. Adams to Monroe, Oct. 17, 1812; American State Papers, For. Rel., III., 625-626.

<sup>37</sup> Daschkoff to Secretary of State, March 8, 1813; American State Papers, For. Rel., III., 624.

especially attractive to Madison. Napoleon had met with serious defeat in his Russian campaign; Great Britain had shown a disposition not to relax, but rather to increase her war measures against the United States, as was shown by a blockade of the Chesapeake and the Delaware; and in her own internal government the United States was experiencing the utmost difficulties in the war and finance departments, made the more serious by the disaffection of the New England States. Under these conditions it was not strange that Madison, who had never wanted war, should have eagerly grasped at anything that looked toward peace.

Secretary Monroe replied to Daschkoff on March 11, 1813, announcing the acceptance of the offer of mediation.<sup>38</sup> He stated that arrangements would be made at once to enable the Emperor to carry out his generous purpose. In keeping with the promise made to the Russian chargé d'affaires, the President proceeded without any delay to the appointment of John Quincy Adams, United States Minister Plenipotentiary at the Court of St. Petersburg, Albert Gallatin, Secretary of the Treasury, and James Bayard, a prominent member of the United States Senate, as *Envoys Extraordinary and Ministers Plenipotentiary* to meet with persons similarly appointed by Great Britain, at St. Petersburg under the mediation of the Russian Emperor.

<sup>38</sup> Monroe to Daschkoff, March 11, 1813; *American State Papers, For. Rel.*, III., 624-625.

On May 25, the President called the Senate in special session to consider the subject of the Russian mediation and the ratification of the persons whom he had named.<sup>39</sup> The Senate approved of the action of the President and at once confirmed the names of Adams and Bayard, but refused so to act in the case of Gallatin. The technical objection to the confirmation of Gallatin lay in the fact of his still holding the secretaryship of the Treasury. The Senate requested information of the President as to whether in the appointment of Gallatin to the mission the office of Secretary of the Treasury would be made vacant. Madison, desiring to retain the services of the efficient head of the Treasury Department, replied that the office would not be vacant, as the Secretary of War, William Jones, would perform the duties of the Secretary of the Treasury during the temporary absence of Gallatin. The Senate, then, upon the recommendation of the special committee, to whom the question of Gallatin's appointment had been referred, passed the following resolution: "Resolved, that in the opinion of the Senate, the powers and duties of the Secretary of the Department of the Treasury and those of an Envoy Extraordinary to a Foreign Power, are so incompatible that they ought not to be and remain united in the

<sup>39</sup> Richardson, Messages and Papers of the Presidents. I. 526 et seq.

same person."<sup>40</sup> The Senate further voted that the committee to whom was referred the appointment of Gallatin should communicate the foregoing resolution to the President and confer with him upon the subject thereof.<sup>41</sup> The President refused to receive the committee, holding that the Senate had overstepped its constitutional limits in making such a proposition.

The commissioners were not only appointed before the convening of the Senate, but had received their instructions and were well on their way before that body met. The haste with which the President acted in the matter of mediation, without knowing whether it would be acceptable to Great Britain, and his appointment of Gallatin gave opportunity for severe criticism on the part of the Federalists. Objections were made to the expense of so uncertain a mission; to the right of the President to appoint to an office not yet created by the legislature; to the commissioners' departure before being ratified by the Senate; to the President's acting practically without the advice and consent of the Senate; and to locating in one person two offices deemed incompatible.<sup>42</sup> It was very evident, however, from the heated discussions in the Senate and the lengthy articles in the press that the

<sup>40</sup> June 10, 1813; Madison Papers, MS., XLIX., 78. In MSS. Div., Library of Congress.

<sup>41</sup> June 16, 1813; Madison Papers, MS., XLIX., 85.

<sup>42</sup> Boston Weekly Messenger, Dec. 10, 17, 1813.

real reason for the opposition<sup>43</sup> was the party feeling against the Administration, the foremost personalities of which were Madison and Gallatin. Under these circumstances Gallatin failed of confirmation by one vote.<sup>44</sup>

Instructions had been drawn up and given to the commissioners, under the date of April 15, 1813. This notable document stated that as soon as Great Britain should give satisfactory assurance that she would abandon her claim with respect to impressment of seamen and "illegal blockades," warfare on the part of the United States would cease. Nearly three fourths of the paper was occupied with a discussion of the subject of impressment, and upon this point it was insisted that a distinct and definite provision against the practice was a *sine qua non*. Assurance was to be given in return for such provision that the Government of the United States would take such measures as should secure Great Britain against the loss of her seamen in the service of the United States.<sup>45</sup>

It was also stated, as an essential condition, that a precise definition of blockade be given by Great Britain. The declaration of Great Britain, in 1803, "that no blockade would be legal, which was not supported by

<sup>43</sup> N. Y. Herald, April 7, 1813.

<sup>44</sup> Madison to Gallatin, Aug. 2, 1813; Madison Papers, MS., LII., 58.

<sup>45</sup> Monroe to Peace Plenipotentiaries, April 15, 1813; American State Papers, For. Rel., III., 695-700.

an adequate force, and that the blockades which it might institute should be supported by an adequate force," were regarded as constituting a satisfactory definition. These words, in substance, had been used by the Lords Commissioners in 1803 with reference to the British blockade of Martinique and Guadaloupe, the legality of which the United States protested. The British Government, in a letter to the Secretary of State, wrote that they had sent orders to Commodore Hood "not to consider any blockade of those islands as existing unless in respect of particular ports, which might be actually invested, and then not to capture vessels, bound to such ports, unless they shall previously have been warned not to enter them." A second definition suggested as a satisfactory alternative was also derived from British sources. Great Britain, in a convention with Russia in 1801, had agreed "that, in order to determine what characterizes a blockaded port, that denomination is given only to a port where there is, by the disposition of the Power which attacks it, with ships stationary or sufficiently near, an evident danger in entering."<sup>46</sup>

A third main subject for discussion given in the instructions to the commissioners was with reference to the trade of the United States with enemy's colonies and their parent country. If, however, it was stated, an arrangement on the subject of such trade to a

<sup>46</sup> Monroe to Peace Plenipotentiaries, April 15, 1813; American State Papers, For. Rel., III., 695-700.

proper extent could not be secured by treaty provision, silence should be maintained respecting it. Other objects deemed of importance in the instructions were: regulation of search for contraband goods; restriction of articles to be regarded as contraband; guarantee of rights of neutral commerce; prohibition of trade with the Indians on the part of Great Britain; the non-restriction of the United States in augmenting her naval power upon the Great Lakes.<sup>47</sup>

While provision against the practice of impressment was made a *sine qua non*, the commissioners were allowed to agree to a provision limiting the arrangement merely to the existing war in Europe. This concession was permitted, since it was believed that Great Britain, when the war was over, would not again revive her claims to impressment. Instructions, however, were given the commissioners to make no arrangement which would impair the right of the United States, or sanction the British claim on this point. Provision was also to be made for the mutual restoration of territory.<sup>48</sup>

In further instructions, given on April 27, Monroe suggested the possibility, in the event of the acceptance of the mediation by Great Britain, that the subject of the Florida claims would come up for discussion. In

<sup>47</sup> Monroe to Peace Plenipotentiaries, April 15, 1813; American State Papers, For. Rel., III., 695-700.

<sup>48</sup> *Ibid.* Monroe Papers, MS., V., 562 et seq. Library of Congress.

that case the commissioners were to base the claims of the United States to West Florida on the ground of cession from France, and to East Florida on the ground of indemnity for spoliation.<sup>49</sup>

The men who were appointed to the commission were all men who were strongly in favor of peace. Adams had from the beginning deplored the war with Great Britain.<sup>50</sup> Bayard, a Federalist, had openly opposed it in a speech in the Senate when the declaration of war was voted;<sup>51</sup> and Gallatin, bearing the responsibility for the national finances, welcomed a possible relief to the financial crisis then pending. Bayard and Gallatin would have wished for more discretion, particularly upon the subject of impressment, as they feared that too exact an insistence in that matter might lead to a failure in the negotiation. Bayard preferred an informal understanding merely, if Great Britain should decline to make a formal concession.<sup>52</sup> Both Bayard and Gallatin disapproved of treating of the Florida Claims in the discussions as being in their judgment entirely impolitic.

Secretary Monroe, in further correspondence with

<sup>49</sup> Monroe to Commissioners, April 27, 1813; Writings of Albert Gallatin, I., 539.

<sup>50</sup> Adams to Russell, August 11, 1812; Russell Papers, MS., No. 1632. John Hay Library, Providence, R. I.

<sup>51</sup> Annals of Congress, 12th Cong., 1st sess., 287-288.

<sup>52</sup> Gallatin to Monroe, May 2, 1813; Writings of Gallatin, I., 539-540.



the commissioners, stated that they were at liberty to exercise their entire discretion as to the mode and form of the provisions, if only there should be an effective relinquishment of the practice of impressment. Monroe was opposed to leaving the question of impressment in silence, "trusting to a mere understanding," which, he said, was "liable to doubts and different explanations," for this would fail to guarantee that security which the United States had a right to expect.<sup>53</sup> In a letter, dated May 6, 1813, he wrote that unless a distinct statement could be secured with reference to the relinquishment of impressment it would be better that no further steps be taken in the negotiation.<sup>54</sup> Monroe considered the fate of the Administration and the Republican party, as well as the honor of the state, to be dependent upon the outcome of the negotiations. The political consideration was quite as important as the national to the mind of one who aspired to be the candidate of the Administration party at the next presidential election.

The Secretary expressed his belief in a successful issue of the negotiations; but should they fail through the refusal of Great Britain, he was confident that this would have the effect of arousing the energies of the

<sup>53</sup> Monroe to Gallatin, May 5, 1813; Writings of Gallatin, I., 540-541. MS., Dept. of State, Bureau of Indexes and Archives, Unclassified Instructions, VII.

<sup>54</sup> Monroe to Gallatin, May 6, 1813; Writings of Gallatin, I., 542-544.

nation to a greater degree than had yet been seen and that a more honorable termination of the war would result, "by the complete expulsion of the British from the continent."<sup>55</sup>

Gallatin and Bayard, after receiving their commissions from the President and their "full powers" to negotiate with Great Britain for treaties of peace and commerce, and with Russia for a treaty of commerce, made immediate preparations to join Adams at St. Petersburg. They sailed on May 9, from Philadelphia, on the merchant ship *Neptune*, which had been engaged by the United States Government to convey the commissioners to St. Petersburg. This vessel was commanded by Captain Jones, a brother of the Secretary of the Navy. Accompanying the commissioners as secretaries were George M. Dallas, J. Payne Todd, James Gallatin, George Millegan. Dallas alone received a salary. The Americans reached their destination July 21.

The first intimation that the American Government had that the mediation was not agreeable to Great Britain was contained in a despatch from Adams, dated June 26, 1813.<sup>56</sup> On the 22d of that month the Russian Chancellor had informed the American min-

<sup>55</sup> Monroe to Gallatin, May 6, 1813; Writings of Gallatin, I., 542-544.

<sup>56</sup> Adams to Monroe, June 26, 1813; American State Papers, For. Rel., III., 627; MS., Bureau of Indexes and Archives, Russian Despatches, II., No. 113.

ister of despatches from Count Lievin, the Russian Ambassador in London, stating that the British Government had replied that their differences with the United States were of such a nature as to render mediation inadmissible.<sup>57</sup>

There were several reasons advanced in England why the mediation should be rejected. There was first the objection given by the British Government, to the effect that the differences between the United States and Great Britain involved important principles of English internal policy.<sup>58</sup> A second objection arose from the belief that Russia would be disinclined to favor the commercial policies of Great Britain. Her position in the Armed Neutrality League of 1780 made her an object of distrust. Again, the British Government saw no need of mediation, with a view to a peace on terms of equality, when by continuing the war for a few months longer, as they thought, either the American Union would be divided, or the Government would sue for peace upon any terms that might be imposed. The English press opposed the acceptance of the mediation on the ground that America had not yet been sufficiently punished and the power and majesty of Great Britain had not yet been adequately displayed. Though Great Britain had flatly refused the offer of mediation long before Romanzoff disclosed the fact, the Russian Minister

<sup>57</sup> *Memoirs of John Quincy Adams* (1874 ed.), II., 479.

<sup>58</sup> *Ibid.*

still hoped by renewing the offer to secure an acceptance.

The American commissioners the day after their arrival, July 22, met with Adams and discussed the procedure of business to be presented to the Russian Government. They learned at this time the slight hopes upon which their mission rested. On the 24th Bayard and Gallatin were presented by the American minister to the Russian Chancellor. Gallatin gave to Count Romanzoff copies and translations of their letters of credence and "full powers."<sup>59</sup> The Count stated<sup>60</sup> that it would be necessary to transmit these papers to the Emperor, at his headquarters, he being at this time with the army in the field. The commissioners had at once upon their arrival apprised the Russian Government of the fact, and on the 30th of July had sent an official note<sup>61</sup> to the Chancellor announcing the acceptance of the offer of mediation by the United States. They requested information as to the measures that had been adopted by the respective Governments of Great Britain and Russia to give effect to the mediation.

In the preparation of this first important note the

<sup>59</sup> American Commissioners to Monroe, Aug. 17, 1813; MS., Bureau of Indexes and Archives, Russian Despatches, IV., No. 1.

<sup>60</sup> *Ibid.*

<sup>61</sup> American Plenipotentiaries to Romanzoff, July 30, 1813; Russell Journals, V., 15-17.

difficulties of negotiation by a commission presented themselves. Adams, extremely annoyed, wrote: "It has been the work of a week and might have been done by either of us in two hours. . . . It is a sufficient specimen of the method of negotiating by commissions. . . . In the multitude of councillors there is safety, but there is not dispatch."<sup>62</sup>

Albert Gallatin, with characteristic energy and foresight, as soon as he arrived in Europe entered upon an extensive correspondence with acquaintances at the various European capitals in order to gain all the information that might assist in the negotiations. From Gothenburg he wrote to the banking firm of Baring Brothers, London, to ascertain if possible the intentions of the British Government with respect to mediation.<sup>63</sup>

Alexander Baring, in a friendly letter, July 22, wrote that Great Britain had refused the mediation of a third Power because the question at issue was purely of a domestic nature of which no foreign Government could fairly judge; that the war was a sort of family quarrel where foreign interference would only do harm and irritate.<sup>64</sup> He stated that Great Britain's refusal of mediation was not to be taken as a proof of her unwillingness to make peace. The Government of

<sup>62</sup> *Memoirs of J. Q. Adams*, II., 497.

<sup>63</sup> Gallatin to Baring Brothers and Company, June 22, 1813; *Writings of Gallatin*, I., 545-546.

<sup>64</sup> Baring to Gallatin, July 22, 1813; *Writings of Gallatin*, I., 546-552; *Russell Journals*, V., 93-106.

Great Britain, he was convinced, would willingly enter into direct negotiations with the United States. To this end it would be advisable that London or Gothenburg, Sweden, should be the seat of the negotiations, as proximity to the seat of Government of Great Britain might help greatly in bringing about mutual understanding between the two states.<sup>65</sup> Gallatin replied to Baring's suggestion of direct negotiations to the effect that while the commissioners might be willing to confer at London or Gothenburg they were limited by their instructions to mediation under the agency of Russia.<sup>66</sup> He expressed the hope that Baring's Government might yet consent to mediation. Baring in a letter two months later wrote that feeling was favorable to negotiation with the United States, but that there was a fixed determination not to enter into mediation.<sup>67</sup> He considered, he said, the reservation of the right of search essential, though such recognition on the part of the United States would not be demanded. The practice, he maintained, could not be given up without seriously impairing the naval power of the Kingdom.

Gallatin, upon learning through his friend Baring

<sup>65</sup> Baring to Gallatin, July 22, 1813; Writings of Gallatin, I., 546-552; Russell Journals, V., 93-106.

<sup>66</sup> Gallatin to Baring, Aug. 27, 1813; Writings of Gallatin, I., 564-567.

<sup>67</sup> Baring to Gallatin, Oct. 12, 1813; Writings of Gallatin, I., 584-587. Russell Journals, V., 113-120.

that the mission under Russian mediation was doomed to failure, wrote at once to Secretary Monroe asking for instructions and renewed powers, in case a change in place and method of negotiations should be decided upon.<sup>68</sup>

The subject of impressment, which had been the most emotional of the causes which led to the declaration of war, and for which alone the war was continued after the orders in council had been repealed, was the main difficulty in any negotiations between the two states. Great Britain was determined not to yield in the slightest degree in her claims to the alleged right of impressment, while the United States held that it would be an added disgrace for her to submit, after having resisted the claim to the extent of war.

In this seemingly impossible dilemma in which the United States found herself the statesmanship of Albert Gallatin was shown. It was he who first found the solution of the much debated impressment question. Before it was known that mediation was impossible, Gallatin in a letter to Emperor Alexander had discussed, at great length, the questions involved in the war, as these might, naturally, be considered in the negotiations. With reference to impressment, he stated that he was willing to leave the abstract principle of the subject out of discussion; that the United States would agree hereafter not to employ, even on

<sup>68</sup> Gallatin to Monroe, Aug. 28, 1813; MS., Dept. of State, Bureau of Indexes and Archives, "Treaty of Ghent."

board merchant vessels, any seamen subject to Great Britain; that a suspension of the pretensions of Great Britain, without renouncing them, would satisfy the United States; but that the United States would not under any circumstances acknowledge the right of Great Britain to impressment. If agreement could not be reached on that subject, Gallatin would favor the postponement of discussion of impressment to a more favorable time, as "maritime questions seem to fall with the war; and it is above all desirable that the *whole* civilized world may breathe and, without any exception, enjoy universal peace."<sup>69</sup> It was in accord with the policy here set forth that the later peace negotiations were carried on and a treaty of peace was finally signed.

It has been stated that the American commissioners upon their arrival at St. Petersburg learned from Adams of the probable futility of their mission. It was not until two weeks later that they were officially informed of the substance of the reply made by Great Britain. The Russian Chancellor still hoped that the refusal of Great Britain was not absolute, but that upon learning of the actual arrival of the American ministers she would consent to the mediation. With this hope in view the Chancellor stated that he had sent another despatch to Count Lieven, the Russian

<sup>69</sup> Gallatin to Emperor Alexander [June 19, 1813]; Writings of Gallatin, I., 629-631.



Ambassador in London, instructing him to renew the offer of mediation.<sup>70</sup> On August 14, an official note, covering the American position on the points at issue between the United States and Great Britain, which the Russian Chancellor had requested, was presented, together with a printed copy of the Act of Congress of March 3, 1813, with reference to the non-employment of British seamen and other regulations to become effective when the war was over. Five days later, Adams, in an interview with the Chancellor, urged upon him the importance of positive information as to the acceptance or rejection of the Russian proposal by Great Britain in order that Bayard and Gallatin might not be unnecessarily detained. The Chancellor replied that he could make no positive statement. A few weeks later, November 2, in an official interview he told Harris, the secretary of the mission, that the Russian Ambassador had expressed his unwillingness to present the second note which had been sent him inasmuch as Great Britain had already announced her decision to the Russian Emperor.<sup>71</sup> The declination of the British Government was also learned from Lord Walpole, the British Ambassador at St. Petersburg. The commissioners endeavored to secure from the Chancellor an official statement of the fact

<sup>70</sup> American Commissioners to Monroe, Aug. 17, 1813; Writings of Gallatin, I., 569-574.

<sup>71</sup> Memoirs of J. Q. Adams, II., 539.

of Great Britain's refusal. This he declined to make on the ground that he had not been officially informed by the Emperor.<sup>72</sup> Months passed and no official information was received by the mediation envoys.

The American commissioners were thus placed in a most exasperating position. They had powers to treat under the mediation, but no one with whom to treat. They were conscious that the fruitlessness of the mission would add to the factional feeling at home. Though annoyed at the evasive methods employed by the Russian Government, they still felt obliged to remain at St. Petersburg until officially informed of the refusal of Great Britain. There was less objection to the delay, however, since they hoped to receive new instructions from the President relating to the overtures of Great Britain for direct negotiations.<sup>73</sup> Nevertheless, the commissioners at last grew restive, and Bayard decided to remain no longer at St. Petersburg. He addressed a note<sup>74</sup> to the Chancellor announcing his intention of leaving and asking for his passports. He and Gallatin left St. Petersburg on January 25, and proceeded to London.<sup>75</sup>

<sup>72</sup> *Memoirs of J. Q. Adams*, II., 539.

<sup>73</sup> Adams to Monroe, Dec. 30, 1813; MS., Bureau of Indexes and Archives, Russian Despatches, III., No. 125.

<sup>74</sup> Bayard to Romanzoff, Jan. 7, 1814; *Russell Journals*, V. 137-147.

<sup>75</sup> Adams to Monroe, Jan. 29, 1814; MS., Bureau of Indexes and Archives, Russian Despatches, III., No. 127.

Two weeks passed and no official communication came from the Russian Government with reference to the British note. Adams, then, believing that the Emperor did not intend to make public Great Britain's refusal of mediation, determined to prove the fact. He accordingly requested of the Chancellor that he be given a copy of the British Ambassador's note to which reference had been made.<sup>76</sup> Romanzoff replied that he had been informed by Count Lieven that Lord Castlereagh had communicated directly with the Government at Washington suggesting that instructions for a direct negotiation be sent to the American commissioners through the medium of Admiral Warren.<sup>77</sup> Count Lieven's despatch, containing this information, was shown to Adams. The Chancellor was deeply chagrined that the official papers received from London had not been sooner communicated to him.<sup>78</sup> He considered himself so ill treated in the matter that he offered his resignation to the Emperor.<sup>79</sup> It was shown later that the final refusal on the part of Great Britain to accept mediation had been communicated the

<sup>76</sup> Adams to Clay, Feb. 2, 1814; Russell Journals, V., 137-141.

<sup>77</sup> Romanzoff to Adams, Feb. 4, 1814; Russell Journals, V., 142.

<sup>78</sup> Adams to Gallatin and Bayard, Feb. 6, 1814; Russell Journals, V., 150-154.

<sup>79</sup> Adams to Monroe, Feb. 4, 1814; Russell Journals, V., 147-149.

first of September to Count Nesselrode, the Russian Acting Minister of Foreign Affairs, by Lord Cathcart, the British Ambassador at St. Petersburg.<sup>80</sup> Count Nesselrode was with the Emperor at his headquarters with the army when the note was received, and he failed to send it to the Chancellor, whose influence in the Russian Government was waning. The annoying circumstances in which the American commissioners had been placed was due to Russian politics, the Emperor evidently wishing to force the resignation of Count Romanzoff.

<sup>80</sup> Cathcart to Nesselrode, Sept. 1, 1813; American State Papers, For. Rel., III., 622.

## CHAPTER IV

### ACCEPTANCE OF GREAT BRITAIN'S PROPOSAL FOR DIRECT NEGOTIATIONS

While the American commissioners were delayed at St. Petersburg in connection with the fruitless mission of mediation, the British Government had been arranging for a direct negotiation. The Prince Regent, upon learning that the commissioners were not averse to a negotiation at London or Gothenburg, but that their powers were limited to the negotiation under the mediation of Russia, ordered sent to the port nearest the seat of Government of the United States a flag of truce, with an official note offering direct negotiations. The note, addressed by Lord Castlereagh, British Secretary of State for Foreign Affairs, to the Secretary of State of the United States, said<sup>1</sup> that the British Government was "willing to enter into discussion with the Government of America for the conciliatory adjustment of the differences subsisting between the two States, with an earnest desire on their part to bring them to a favorable issue, upon principles of perfect reciprocity, not inconsistent with the established maxims of public law, and with the maritime rights of the British empire." This communication, brought

<sup>1</sup> Castlereagh to Secretary of State, Nov. 4, 1813; American State Papers, For. Rel., III., 621.

upon the British schooner *Bramble*, reached Annapolis December 30, 1813. It was received at Washington at twelve o'clock the same night.<sup>2</sup>

In spite of the fact that the British Government placed the "maritime rights of the British Empire" on an equal footing with the "established maxims of public law," and that the United States knew from past experience that in any negotiations British maritime rights would be regarded above all other rights, the Government at Washington was disposed to meet any overture that promised peace. There was, however, a general feeling in the United States that Great Britain, in making the proposal for direct negotiations, acted with a view of interposing a delay. Secretary Monroe, in reply to the British note, stated that the President, while regretting the delay then interposed in the peace negotiations, was willing to accept the offer of the British Government, in order that he might show the sincerity of his desire for peace.<sup>3</sup>

Though anxious for peace, the Government of the United States adhered with dignity to its purpose not to compromise its principles for the sake of securing peace. Monroe in his note said: "Wherever the United States may treat, they will treat with the sincere

<sup>2</sup> Boston Weekly Messenger, Jan. 7, 1814.

<sup>3</sup> Monroe to Castlereagh, Jan. 5, 1814; American State Papers, For. Rel., III., 622-623. Russell Journals, V., 373-379.

desire they have repeatedly manifested of terminating the present contest with Great Britain, on conditions of reciprocity consistent with the rights of both parties as sovereign and independent nations, and calculated not only to establish present harmony, but to provide, as far as possible, against future collisions which might interrupt it." We may not be far wrong in assuming that this insistence upon the sovereign political independence of the United States, maintained in all the diplomatic negotiations of the war of 1812, is the reason that there have been "no further collisions," at least to the extent of war, during the century since.

The President, having accepted the offer of the British Government, at once communicated this information in a message to Congress, January 7, 1814.<sup>4</sup> A week later he nominated, "by and with the advice and consent of the Senate," John Quincy Adams, James Bayard, Henry Clay, and Jonathan Russell as Envoys Extraordinary and Ministers Plenipotentiary of the United States, "with authority to meet a minister or ministers having like authority from the Government of Great Britain, and with him or them to negotiate and conclude a settlement of subsisting differences, and a lasting peace and friendship between the United States and that Power."<sup>5</sup> The Senate con-

<sup>4</sup> President's Message; American State Papers, For. Rel., III., 621.

<sup>5</sup> Russell Journals, V., 165-166.

firmed the nominations four days later. Christopher Hughes, Jr.,<sup>6</sup> was appointed secretary to the mission; and William Shaler was attached to it as bearer of communications of the special ministers to the American ministers at the various courts of Europe.

Albert Gallatin was added to the mission later, when it was learned that he was still in Europe. The President had supposed that he was on his way home, and therefore had not named him when the others were appointed.<sup>7</sup> At this time there were no serious objections to Gallatin's appointment, inasmuch as he no longer held the position of Secretary of the Treasury. His nomination was sent to the Senate on February 8, and on the following day it was confirmed. When Gallatin was nominated to the mission at St. Petersburg the President had appointed the Secretary of the Navy, William Jones, temporarily, to attend to the duties of the Secretary of the Treasury, in addition to his own duties. This power of temporary appointment was derived from an act of Congress passed May 8, 1792. This provided that "in case of the death, absence from the Seat of Government, or sickness of the Secretary of State, Secretary of the Treasury, or of the Secretary of the War Department, or of

<sup>6</sup> Russell Journals, V., 172.

<sup>7</sup> Monroe to Adams, Feb. 3, 1814; MS., Bureau of Indexes and Archives, Unclassified Instructions, VII.



any officer of either of the said Departments whose appointment is not in the head thereof, whereby they cannot perform the duties of their said respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices until a successor be appointed, or until such absence or inability by sickness shall cease."<sup>8</sup> By an amendment to this act passed February 13, 1795, it was provided that no vacancy should be filled in the manner thus prescribed for a longer term than six months.<sup>9</sup> In accordance with this law the portfolio of the Secretary of the Treasury had become vacant through Gallatin's absence for more than six months. Shortly before submitting Gallatin's name a second time as peace minister to the Senate for confirmation, Madison had nominated as Secretary of the Treasury, George W. Campbell, and that gentleman received confirmation upon the same day that Gallatin's appointment was sanctioned.

All five members appointed to the new commission were men of large experience in national affairs. Four of them achieved an enduring rank among the foremost of American statesmen. John Quincy Adams, the chairman of the mission, though at this time only in middle life, had had, for an American of that period,

<sup>8</sup> Annals of Congress, 2d Cong., 1st sess., 1385.

<sup>9</sup> Annals of Congress, 3d Cong., 2d sess., 1499.

an unusual diplomatic experience, which had given him acquaintances in all the principal capitals of Europe. As a boy of eleven, in 1778, he accompanied his father to Paris upon a diplomatic mission. At the age of fourteen he served as private secretary to Francis Dana, who was the accredited envoy of Russia. In 1783, Adams was again with his father at Paris when the first peace treaty was negotiated. From 1794 to 1797 he was minister to Holland and from 1797 to 1801 minister to Prussia. While in Berlin he successfully negotiated a commercial treaty with Prussia. Upon the defeat of the Federalists in 1801 Adams was recalled. He then entered into political life, first being elected United States Representative and then United States Senator. His senatorship expired March 3, 1809, and he was not reelected by the Federalist party of which he had been a member, because he had voted for the embargo act, and had even been a member of the committee which had introduced it. Though his severance from the Federalist party cost him his seat in the Senate, it brought him a reward, so it was claimed, at the hands of President Madison,<sup>10</sup> in the form of an appointment as minister to the Court of St. Petersburg. This position he had held, at the time of the peace negotiations, for more than four years.

Adams's talents and education, no less than his re-

<sup>10</sup> Boston Weekly Messenger, Dec. 27, 1811.

markable experience, fitted him admirably for his position upon the peace commission. His thorough knowledge of constitutional and international law; his conscientious devotion to high ideals; his indefatigable industry; and his ability as a writer of forceful English rendered him particularly fitted for the work. While possessing these excellent characteristics, Adams had others which were less commendable. He was easily provoked; rather ungracious in manner; lacking in sympathy with men of different character and training from himself; and utterly devoid of a sense of humor. These qualities, added to his cold intellectuality, isolated him from the fellowship of other men. He possessed few friends and these not of the closest. He himself deplored the lack of friends and the fact of his incurring the enmity of nearly all the men with whom he had been associated in public service. It was due to the characteristics which have been mentioned that during the period of the peace negotiations Adams rarely appeared upon friendly terms with the other commissioners.

James A. Bayard of Delaware was a prominent member of the Federalist party. His political experience at the time of his appointment on the peace commission had been confined to service in Congress, covering a period of seventeen years, eight in the House of Representatives and nine in the Senate. In 1801, he had been offered by President Adams the position of

minister to France, but had declined it. Bayard was highly esteemed by his colleagues in the Senate and possessed the confidence of both Federalists<sup>11</sup> and Republicans.<sup>12</sup> His legal ability, sound reasoning, and good judgment, which made him a leader in Congress, rendered him especially useful on the peace mission.

Henry Clay, the youngest of the commissioners, being now thirty-seven, had already for several years been one of the leading politicians of the country. He had entered the Senate when lacking several months of the constitutional age, to fill out an unexpired term. At the end of that term, 1811, he was elected to Congress, and in the first session of his service became Speaker of the House. This position he held at the time of his appointment to the peace commission. Clay represented the newer national life of the country, in contrast to the sectionalism of New England, or the exclusiveness of the South. He was brilliant, persuasive in speech, and gracious in bearing, though strong in his enmities, and impulsive in action.

Jonathan Russell of Massachusetts, the least known member of the mission, had had valuable experience in diplomatic negotiations. He had been *chargé d'affaires* at Paris in 1811; and had occupied a like position at the Court of St. James from November, 1811, to Sep-

<sup>11</sup> Federal Republican, Sept. 19, 1814.

<sup>12</sup> Clay to Monroe, Oct. 26, 1814; Monroe Papers, MS., XIV., 1807.

tember 1, 1812. While in this capacity, at the outbreak of the war, it will be recalled, he had been intrusted with power to arrange an armistice. His negotiations were carried on with patriotism and integrity, though it may be with some narrowness of spirit. His conduct, however, was quite generally approved at home. Russell's intellectual abilities were not conspicuous, though he possessed a fair degree of literary skill. His enemies were many, due in a large degree, it would seem, to his own inordinate conceit. This was most apparent in his jealous distrust of men of larger caliber than himself, which led him to utter reproaches and criticisms of their motives. Though he was charged with double dealing and with making personal profit out of his public positions, the charges appear not to have been substantiated. When besought<sup>13</sup> by his friends to give them secret information of public affairs, from which they might profit commercially, Russell honorably rejected and repudiated such requests.<sup>14</sup> His correspondence, dealing with trifling personalities and empty compliments, shows a man of rather ordinary ability.<sup>15</sup> At the same time with Russell's nomination to Gothenburg, his nomination as minister to Sweden was sent by the President to the

<sup>13</sup> John Smith to Russell, Feb. 9, 1814; Russell Papers, MS.

<sup>14</sup> Russell to Madison, Dec. 21, 1811; Russell Papers, MS., No. 2503.

<sup>15</sup> Russell Papers, MS.

Senate. His nomination to the second position had been made the year before, but the Federalists had at that time succeeded in preventing his appointment. Now his appointment to both positions was confirmed; to the first by a vote of 22 to 8, and to the second by a vote of 16 to 14.<sup>16</sup>

Albert Gallatin, the last member to be added to the commission, was, in personal qualities and ability for conducting a negotiation, perhaps the best equipped of them all. His tact and humor on more than one occasion prevented the breaking off of the negotiations. No less important was his influence in maintaining harmony among the members themselves. Gallatin, though inexperienced in conducting diplomatic negotiations, had for many years been a prominent figure in the Administration. Upon him, more than upon any other man, had rested the burdens and responsibilities of the Government during the preceding twelve years. As Secretary of the Treasury, he had not only been the author of the various measures to meet the fiscal necessities of the Government, but he had also maintained a commanding influence in the other departments of the Government. The Federalists, with much truth, considered him the originator of every measure inaugurated during these

<sup>16</sup> J. B. Howell to Russell, Jan. 18, 1814; Russell Papers, MS., No. 875.

years.<sup>17</sup> Though for years unjustly and unreasonably criticised, Gallatin refrained from that bitterness of feeling and intemperate language which was so commonly indulged in by public men of his day.

The only common tie that existed between the members of the commission was that of loyalty to their country. In personal characteristics and temperament, in training and education, in political and religious beliefs, there was wide diversity. Accustomed themselves to be leaders in their several spheres, they ungraciously yielded to one another. Every member of the mission save Bayard was personally disliked by one or more of the others. Adams was disliked by the other four, especially by Bayard, Clay, and Russell.

The public, in general, was well pleased with the appointees.<sup>18</sup> They were men whose political opinions were well known, and these, it was believed, were in accord with the general feeling of the country. There was much confidence that the ministers would speedily negotiate a treaty of peace, provided that this could be done consistently with the honor of the nation, and without relinquishing principles deemed essential to the sovereign character of the state.<sup>19</sup>

The commissioners were informed by Secretary

<sup>17</sup> N. Y. Evening Post, Sept. 25, 1812. *Columbian Centinel* (Boston), Feb. 8, 1812.

<sup>18</sup> Providence Patriot, Jan. 29, 1814.

<sup>19</sup> *Ibid.*, Feb. 19, 1814.

Monroe that the instructions issued April 15, 1813, under the proposed Russian mediation, were to remain in force for the negotiation, except for certain modifications. With regard to impressment, the Secretary stated that there had been no change in the sentiment of the American Government on that question. It maintained with as much force as ever that "this degrading practice must cease; our flag must protect the crew, or the United States cannot consider themselves an independent nation." It was again mentioned that the American Government was willing to pass a law which would remove the pretexts for impressment by the British Government by altogether excluding British seamen from service in American vessels, and even all British subjects, if necessary, except the few already naturalized. A further provision of such a law would be to stipulate, likewise, the surrender of all British seamen deserting in American ports from British vessels, public or private. If a treaty should be negotiated, the commissioners were to secure, if possible, a stipulation that American impressed seamen be paid by the British Government the sum that their wages would have amounted to in the merchant service during the time of their detention.<sup>20</sup>

Upon the subject of blockade the Secretary urged the importance of obtaining a precise definition. Stip-

<sup>20</sup> Monroe to American Plenipotentiaries, Jan. 28, 1814; American State Papers, For. Rel., III., 701-702.



ulations were also to be made for indemnity for the destruction, contrary to the laws and usages of war, of all unfortified towns and other private property. The commissioners were instructed to secure the restoration to their owners of the slaves taken away by the British during the war, or payment for them at full value. The charge was made that "a shameful traffic has been carried on in the West Indies, by the sale of these persons there, by those who professed to be their deliverers."<sup>21</sup> It was held that, if these slaves were regarded as non-combatants, they should be restored; if as property, they should be paid for.

Secretary Monroe declared in his instructions to the commissioners that the sentiments of the President were the same, in every instance, as at the time of the former instructions; and that the reasons for maintaining these sentiments had "become more evident and strong" since the date of the former instructions. If the negotiations, it was said, had proceeded under the mediation of Russia, the United States would have confidently expected the favor of other European Powers, in case Great Britain had attempted to dictate hard terms. Under the present circumstances a good understanding with Russia and the Baltic Powers was desirable.

The original manuscript containing these instruc-

<sup>21</sup> Monroe to American Plenipotentiaries, Jan. 28, 1814; American State Papers, For. Rel., III., 701-702.

tions includes much that has been omitted in the printed form. The portions that were omitted display the intense feeling of the Administration at the time upon the points at issue. One unprinted passage, referring to neutral rights, says: "The objects are the same and the reasons for maintaining them have gained great additional weight, by the vast amount of blood and treasure which has been expended in their support."<sup>22</sup>

After discussing the two main points, those of impressment and blockade, the original manuscript contains a confidential article upon the Canadas, which, in view of the charges made by the British in the treaty negotiations, is interesting. The paragraph reads as follows: "The reasons given in my letter of the 23d of June and the 1st of the month, in favor of a cession of the Canadas to the United States, have also gained much additional force from further reflection. Experience has shown that the British Government cannot participate in the dominion and navigation of the Lakes, without incurring the danger of an early renewal of the war. It was by means of the Lakes that the British Government interfered with and gained an ascendancy over the Indians, even within our limits. The effect produced by the massacre of our citizens after they were made prisoners, and of defenseless

<sup>22</sup> Monroe to American Plenipotentiaries, Jan. 28, 1814; MS., Bureau of Indexes and Archives, Unclassified Instructions, VII.

women and children along our frontier need not now be described. It will perhaps never be removed while Great Britain retains in her hands the government of those provinces. This alone will prove a fruitful source of controversy, but there are others; our settlement had reached before the war from the northern boundary with Lower Canada, along the St. Lawrence, to the southwestern extremity of Lake Erie, and after peace it can not be doubted, that they will soon extend by a continued population to Detroit, where there is now a strong establishment, and to the banks of the Michigan, and even of the other Lakes, spreading rapidly over all our vacant territory. With the disposition already existing, collisions may be daily expected between the inhabitants on each side, which it may not be in the power of either Government to prevent. The cupidity of the British traders will admit of no control. The inevitable consequence of another war, and even of the present, if persevered in by the British Government, must be to sever these provinces by force from Great Britain. Their inhabitants, themselves, will soon feel their strength and assert their independence. All these evils had therefore better be anticipated, and provided for by timely arrangements between the two Governments in the mode prescribed. Should the British Government decline cession of territory to an extent to remedy the evils complained of, you will not fail to attend to the injunction contained in my letter

of the 15th of April last, as the measures of mitigating them as far as may be able."<sup>23</sup>

A third omission in the printed instructions is found in connection with the discussion of Great Britain's refusal to accept mediation. This explains the reason, in Monroe's mind, for the British rejection of the Russian offer. The omitted confidential paragraph reads: "I shall proceed to notice the conduct of the British Government in declining the Russian mediation and proposing to treat directly with the United States. Its policy in so doing can not be mistaken. Indeed the British minister explains it himself, in stating that the object was to keep the business unmixed with the affairs of the Continent. Whence this desire, supposing it to be the real and only object, unless it be founded in an opinion, that on the most important questions, which we have to treat with the British Government, Russia and all the other Powers of the Continent have a common interest with the United States against Great Britain, and a dread thence arising, if any negotiation should be carried on under the auspices of the Emperor of Russia, that it might produce a concert. To this cause alone, as is presumed, is the conduct of Great Britain to be imputed. It is, therefore, to the interest of the United States to avoid becoming its victim, and to improve the occurrence, to

<sup>23</sup> Monroe to American Plenipotentiaries, Jan. 28, 1814; MS., Bureau of Indexes and Archives, Unclassified Instructions, VII.

their advantage, as far as may be practicable. It is believed that there is not a Power in Europe that would give the slightest countenance to the British practice of impressment. Had that practice been brought into discussion under the auspices of Russia, it may reasonably be presumed that it would have been treated by the Emperor, so far as he might have expressed an opinion on it, as novel, absurd, and inadmissible in regard to other nations; and that the British ministers would have been forced to support it against the United States by arguments drawn from their former connection with and dependence on Great Britain. Had the British Government supported the practice on the ground of maritime right, applicable to all nations, it would have offended, and might have excited, all against Great Britain. Had it supported it as a right applicable to the United States only, thereby degrading them below the condition of other nations, it was easy to anticipate the effect here. The objection of the British Government to a negotiation which formed an appeal, on any question of neutral right, to the impartial judgment of Russia, or any other power, though not as an umpire, would be still stronger, for all Europe has long known and suffered under British violation of neutral rights. It must have been on this view of the subject, that the British Government declined a negotiation, which could not fail to show in their naked

deformity the injustice of the British claims and usurpation."

Two further paragraphs found in the original manuscript, which were omitted in publication, deal with the policy of the United States with reference to the European Powers. They are, it will be observed, in accord with the early traditional policy of the American Government. "By meeting this overture in the manner in which it has been done, these Powers will see the manifestation of a desire, to keep open the door of communication with them; and to this communication great facility will be afforded, by Mr. Adams and Mr. Russell, who, while joined in the commission to treat with England, may preserve a direct correspondence with the Governments to which they are respectively appointed. In availing yourselves of the good offices of Russia and Sweden, as far as it may be practicable, on any of the points in question, in the proposed negotiations, you will always recollect that the object is to secure to the United States by means thereof, a safe and honorable peace, *and not to combine with any Power, in any object of ambition*, or in claiming other conditions more favorable than that proposed which may tend to prolong the war."<sup>24</sup>

Further instructions were addressed to the peace ministers January 30, February 10, February 14, and

<sup>24</sup> Monroe to American Plenipotentiaries, Jan. 28, 1814; MS., Bureau of Indexes and Archives, Unclassified Instructions, VII.

March 22. Those of January 30 called attention to the fact that American vessels and cargoes in the ports of Great Britain, at the time of the declaration of war, had been seized and condemned by the British Government without previous warning, while the United States had given British vessels six months in which to withdraw, in some instances even longer time. It was suggested that a general provision be made for the compensation for losses incurred by the subjects of each nation at the hands of the other, without time being given to remove their property to their own country.<sup>25</sup>

In a very brief note of February 10, Secretary Monroe suggested that, if the commissioners found themselves unable to conclude a treaty which would provide definite arrangement on the subject of neutral rights, they might agree to a provision that would place the United States in the same position relative to such rights as might be most favorably accorded by Great Britain to any other state.<sup>26</sup>

In the despatch of February 14, Great Britain was charged, in her refusal of mediation, with acting to prevent a good understanding between the United States, Russia, and Sweden on the subject of neutral rights.

<sup>25</sup> Monroe to American Plenipotentiaries, Jan. 30, 1814; MS., Bureau of Indexes and Archives, Unclassified Instructions, VII.

<sup>26</sup> Monroe to American Commissioners, Feb. 10, 1814; American State Papers, For. Rel., III., 703.

This plan, it was stated, would be foiled in the arrangement for the new negotiations. "In accepting the overture to treat in Sweden this attempt of the British Government has been defeated, as the opportunity is afforded to communicate with the Russian and Swedish Governments almost with equal advantage as if we had treated at St. Petersburg under the Russian mediation. By accepting the British overture to treat at Gothenburg, and not at London, as well as by the manner, the utmost respect is shown to the Emperor and likewise to the Government of Sweden. You will not fail, as already instructed, to explain this transaction and the motives that have governed the President in it."<sup>27</sup>

In the matter of impressment Monroe went back to the article in the previous instructions, which authorized an agreement with reference to impressment merely during "the present war in Europe,"<sup>28</sup> if no stipulation could be secured from Great Britain that she would forbear the practice of impressment for a definite term of years. The importance of such a stipulation was dwelt upon in a paragraph which has been left out of the published document. It reads as follows:

<sup>27</sup> Monroe to American Plenipotentiaries, Feb. 14, 1814; MS., Bureau of Indexes and Archives, Unclassified Instructions, VII.

<sup>28</sup> Monroe to American Plenipotentiaries, April 15, 1813; American State Papers, For. Rel., III., 695-700.



“To withdraw from the war without it, would be to subject the United States to all the expense in blood and treasure which has been and may be incurred, without obtaining the security for which we have contended, and leaving us under the necessity for contending for it again at a like expense, whenever another war shall break out in Europe, which will probably not be distant, and may be very soon. In every view of the subject it must be desirable to Great Britain to remove the ground of controversy, if she means to preserve peace, for it is essential to the right and the honor of the United States.”<sup>29</sup>

In the brief additional instructions of March 22, the peace commissioners were told under no pretext to allow British claims to territory south of the northern boundary of the United States, or on the Pacific coast about the Columbia River.<sup>30</sup>

The members of the peace commission were at the time of their appointment widely separated, two in America and three in different parts of Europe. It was nearly six months after their appointment before they were all assembled in the place finally agreed upon for the negotiation. Clay and Russell sailed from New York, February 25, in the United States

<sup>29</sup> Monroe to American Plenipotentiaries, Feb. 14, 1814; MS., Bureau of Indexes and Archives, Unclassified Instructions, VII.

<sup>30</sup> Russell Papers (copy), No. 837.

corvette *John Adams*, and reached Gothenburg April 13.<sup>31</sup> They were the bearers of one copy of the commissions. The day after their arrival they despatched a note to Adams informing him of the mission and of his own appointment. He was requested to join them as soon as possible at Gothenburg.<sup>32</sup> A note was also sent to Bayard and Gallatin notifying them of their appointment. These gentlemen had also been given official notification by Monroe.<sup>33</sup> Bayard and Gallatin had left St. Petersburg January 25,<sup>34</sup> and after spending some time at Amsterdam, where they received news of the acceptance by the United States of the offer of direct negotiation, they had proceeded to London.<sup>35</sup> They arrived in that city April 9, at a time, as they wrote the new commissioners,<sup>36</sup> not favorable for securing a hearing for American interests. The allies had just taken Paris, and on the

<sup>31</sup> Clay and Russell to Bayard and Gallatin, April 14, 1814; Russell Journals, V., 174.

<sup>32</sup> Clay to Russell and Adams, Apr. 14, 1814; Russell Journals, V., 175-176.

<sup>33</sup> Monroe to Plenipotentiaries; MS., Bureau of Indexes and Archives, Unclassified Instructions, VII.

<sup>34</sup> Adams to Monroe, Jan. 29, 1814; MS., Bureau of Indexes and Archives, Russian Despatches, III., No. 127.

<sup>35</sup> Bayard to Clay and Russell, April 20, 1814; Russell Journals, V., 183-184.

<sup>36</sup> Bayard to Clay and Russell, April 20, 1814; Russell Journals, V., 184. Gallatin to Clay, April 22, 1814; Russell Papers, MS., No. 829. Writings of Gallatin, I., 606-608.

19th news arrived of Bonaparte's formal abdication of the thrones of France and Italy. London was intoxicated with joy, and proud of her successes. The Americans found little to encourage their hopes of restoration of peace between their country and Great Britain. On the contrary, they believed that with the release of large numbers of soldiers from the European struggle the war in America would be prosecuted with much greater vigor than heretofore. They found public feeling strongly against the United States and in favor of the continuance of hostilities.<sup>37</sup>

Undismayed by the obstacles presented, Gallatin continued his peace efforts. He found his friend Baring a favorable medium for learning the purposes of the British Government.<sup>38</sup> Through him he was informed that no commissioners had yet been appointed by Great Britain; that the Government had waited until officially notified of the appointment of the commissioners by the United States and the arrival of the same at the place of meeting. Baring<sup>39</sup> also gave the information that, owing to the political changes in Europe, Gothenburg was no longer considered a suit-

<sup>37</sup> Bayard and Gallatin to Monroe, May 6, 1814; Writings of Gallatin, I., 611-613; Russell Journals, V., 231-234.

<sup>38</sup> Gallatin to Baring, April 1, 1814; MS., British Foreign Office, 5, 103.

<sup>39</sup> Baring to Gallatin, April 22, 1814; MS. (copy), British Foreign Office, 5, 103.

able place for the negotiation, and that a change to London or to some place in the Netherlands would be much more acceptable to Great Britain.

Bayard and Gallatin addressed letters respecting the proposed change of place to Clay and Russell at Gothenburg, and requested their opinion as to whether the question of change was within the discretion of the mission, and whether they deemed such a change expedient. They expressed their own conviction that the change was desirable. Colonel Millegan, private secretary of Bayard, was despatched with this communication to Russell and Clay, with instructions to return as soon as possible with the reply of those gentlemen and with the official papers confirming the commission in order that these, together with the notification of the arrival of the American commissioners at Gothenburg, might be communicated to the British Government.<sup>40</sup>

Russell, upon arriving in Europe, had at once proceeded to Stockholm to present his credentials to the Court of Sweden, in accordance with instructions from the Department of State.<sup>41</sup> In the absence of Russell, Clay was obliged to take the responsibility of replying

<sup>40</sup> Bayard to Clay and Russell, April 20, 1814; Russell Journals, V., 186-187. Gallatin to Clay, April 22, 1814; Russell Journals, V., 187-189.

<sup>41</sup> Monroe to Russell, Feb. 5, 1814; MS.; Bureau of Indexes and Archives, Unclassified Instructions, VII.

to Bayard and Gallatin. In his reply<sup>42</sup> he held to the opinion that the instructions, being unrestricted, did not prevent negotiations from being conducted at some place other than Gothenburg, and said that he would favor a change to some place in the Netherlands, but not to London, provided the British Government proposed the change. The only objection that he saw to a change of place was the possibility of offense which Sweden might take, after having been notified that negotiations were to take place within her territory. Any such feeling, he thought, might be prevented by diplomatic tact, especially if it could be made to appear that the United States did not take the initiative in the proposed change, but only acquiesced, in the interests of peace, in a proposal made by Great Britain to this effect.<sup>43</sup> With these reservations Clay gave his consent to a change of place, subject to the approval of the other members of the mission. He ordered a messenger to bear to Russell and Adams at Stockholm the letters received from Gallatin and Bayard, together with a copy of the reply which he had made to these. He informed them that he had ordered Captain Angus, with the *John Adams*, to be in readiness at Gothenburg to convey them to the port nearest

<sup>42</sup> Clay to Bayard and Gallatin, May 2, 1814; Russell Journals, V., 197-205. Writings of Gallatin, I., 608-611.

<sup>43</sup> Clay to Russell, May 1, 1814; Russell Papers, MS., No. 1660.

Ghent.<sup>44</sup> Gallatin and Bayard, upon the receipt of the letter of reply and other papers from Clay, on the 13th of May communicated to Lord Castlereagh, Secretary of State for Foreign Affairs, the fact of the appointment of the American ministers, and enclosed copies of their powers.<sup>45</sup> On the 16th a reply was made to this note by Lord Bathurst, stating that commissioners would be forthwith appointed.<sup>46</sup>

The American commissioners in London then sent a note to Bathurst in which they expressed<sup>47</sup> their willingness to agree upon any other neutral place, which might be more eligible and convenient, for the seat of the negotiations. They expressed their willingness to proceed to Ghent, which had been suggested as a place of meeting.

The other three commissioners were notified of the change and requested to proceed to Ghent as soon as convenient. Adams had left St. Petersburg April 28, and had reached Stockholm May 25, where he found

<sup>44</sup> Clay to Russell and Adams, May 31, 1814; Russell Journals, V., 222-224.

<sup>45</sup> Bayard and Gallatin to Castlereagh, May 13, 1814; MS., British Foreign Office, 5, 103.

<sup>46</sup> Bathurst to Bayard and Gallatin, May 16, 1814; MS. (copy), British Foreign Office, 5, 103. Lord Bathurst was Secretary for War and Colonies in the Cabinet of Lord Liverpool (1812-27).

<sup>47</sup> Bayard and Gallatin to Bathurst, May 17, 1814; MS., British Foreign Office, 5, 103.

Russell.<sup>48</sup> Russell had notified Count d'Engestrom, Minister of State for Foreign Affairs of the Swedish Government, of the change in the place of the negotiation, and that Government had shown no ill feeling on this account.<sup>49</sup> Russell and Adams left Stockholm June 7, and reached Ghent on the 24th. Gallatin and Bayard had remained in London awaiting the appointment of the British commissioners, but the British Government acted with the utmost slowness, failing to make the appointment until May 17.<sup>50</sup> Full powers of the commissioners were issued two days later.<sup>51</sup> After the appointment of commissioners there was a similar policy of delay on the part of the British Government in sending their representatives to the place appointed for the negotiations. This gave a just cause for criticism, and for the belief expressed by the American commissioners that these delays were made designedly<sup>52</sup> by the British in order that they might have the prestige of military success in America, of which they were confident, before entering upon the peace negotiation.

<sup>48</sup> *Memoirs of J. Q. Adams*, II., 634. Adams to Monroe, May 28, 1814; MS., Bureau of Indexes and Archives, Russian Despatches, III., 134.

<sup>49</sup> Russel to d'Engestrom, May 5, 1814; Russell Papers, MS. (copy).

<sup>50</sup> Beasley to Russell, May 17, 1814; Russell Papers, MS., No. 1644.

<sup>51</sup> MS., British Foreign Office, 5, 102.

<sup>52</sup> J. Q. Adams to John Adams, Oct. 27, 1814; Madison Papers, MS., LIII., 76.

On June 11, Gallatin addressed a note to Lord Castlereagh informing him that Clay, Adams, and Russell were on their way to Ghent and that he and Bayard were ready to proceed at a moment's notice. He requested information as to the time when the British commissioners might be expected to arrive. This note was answered by Hamilton, British Under-Secretary of State<sup>53</sup> for Foreign Affairs, to the effect that the British commissioners would leave Sweden for Ghent about the first of July.<sup>54</sup> Clay reached Ghent June 25, one day after the arrival of Adams and Russell. Bayard arrived the 27th, while Gallatin did not reach there until July 6.

The city of Ghent, the old capital of Flanders, with its interesting history and picturesque buildings, was well chosen as the place for the peace negotiations. Situated thirty-five miles east of Ostend, the seaport of the country, and about an equal distance from the cities of Brussels and Antwerp, it had good means of communication with all the leading capitals of Europe. The neutrality of the Flemish provinces had been proclaimed by the treaty of London, May, 1814, which united them in national government with Holland. The people of Ghent were most cordial to the Govern-

<sup>53</sup> Gallatin to Castlereagh, June 11, 1814; MS., British Foreign Office, 5, 102.

<sup>54</sup> Hamilton to Irving, June 15, 1814; MS. (copy), British Foreign Office, 5, 102.



ments of both Great Britain and the United States. This cordiality was shown in the generous hospitality which was extended to the ministers of the two countries.<sup>55</sup> The American ministers were elected honorary members of the various learned societies: Adams, Gallatin, and Bayard of the Society of Beaux Arts; Clay, Russell, and Hughes of the Society of Agriculture and Botany. After the treaty was signed Adams, Gallatin, and Bayard were also elected members of the latter society. Adams had the additional honor of an invitation to inscribe his name in the *Livre d'Or*, a book containing the names of illustrious persons connected with the history of Ghent.<sup>56</sup>

The American commissioners stopped first at the Hotel des Pays-Bas, but shortly removed to quarters on the Rue des Champs, corner of Rue des Foulons. Their first meeting was held in Adams's room on the 30th of June. The next meeting took place on July 9, after the arrival of Gallatin. At this conference it was decided that meetings of the commissioners should be held daily, and that a journal should be kept by each commissioner in which should be copied all papers of which there was but one copy.<sup>57</sup>

<sup>55</sup> Papers on Treaty of Ghent, sent by Thomas Wilson, Consul at Ghent, April 28, 1822, to Secretary of State; MS., Bureau of Indexes and Archives, Consular Reports, 1882.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Memoirs of J. Q. Adams, II., 656 et seq.*

The members themselves were required to provide for the work of transcribing for their own uses, as the Government had furnished only one secretary for the entire mission. Adams, in anticipation of the meeting of the commission, had represented to Secretary Monroe that it would be unwise for the Government not to provide an adequate secretarial force. In the absence of such provision, he averred, either ministers themselves must be burdened with a vast amount of writing or they must employ unofficial secretaries to do the work, who would be under no obligation to observe secrecy upon the matters coming under their observation.<sup>58</sup>

The British Government either possessed an extraordinary degree of confidence in the superiority of their position in any negotiation with the United States, or else they failed utterly to appreciate the character of the statesmen whom the American Government had sent to treat with the British negotiators. It is difficult to understand the reason for the appointment of men of such mediocre ability as Lord Gambier, Henry Goulburn, and William Adams, the British commissioners. The British Ministry may have intended to choose men whom it could easily control; or, what is more likely, the Congress of Vienna bulked so large in

<sup>58</sup> Adams to Monroe, April 25, 1814; MS., Bureau of Indexes and Archives, Russian Despatches, III., No. 133.

the public view that the meetings at Ghent appeared to be of little importance. At any rate, it is generally conceded by American and English historians alike that while the United States appointed to the mission its very best men, Great Britain chose only second-rate men. The foremost writer upon this period has said: "Probably the whole British public service, including Lords and Commons, could not at that day have produced four men competent to meet Gallatin, J. Q. Adams, Bayard, and Clay on the ground of American interests; and when Castlereagh opposed to them Gambier, Goulburn, and Dr. Adams, he sacrificed whatever advantage diplomacy offered; for in diplomacy as in generalship, the individual commanded success."<sup>59</sup>

Lord Gambier, the head of the mission, had attained some distinction in His Majesty's navy. He had been granted a peerage in 1807 as a reward for his services in the bombardment of Copenhagen on September 2, 1807.<sup>60</sup> His knowledge was not profound even in those subjects in which he had most experience, and in dealing with diplomatic matters he had little skill. Henry Goulburn, the second named in the British commission, was a member of Parliament and Under-Secretary of State for War and the Colonies. He had previously been Under-Secretary for Home Affairs.

<sup>59</sup> Henry Adams, *History of the United States (1813-1817)*, IX., 14.

<sup>60</sup> *Dictionary of National Biography*, XX., 393-394.

He was a graduate of Trinity College, Oxford. He was the ablest of the three members of the commission and enjoyed most the confidence of the British Ministry. That he possessed considerable ability is shown in the fact that in 1821 he was made a member of the Privy Council and Chief Secretary to Wellesley, Lord Lieutenant of Ireland; that in 1828, in the Duke of Wellington's administration, he was appointed Chancellor of the Exchequer; that in Peel's first cabinet he was Home Secretary; and in the second, again Chancellor of the Exchequer.<sup>61</sup> William Adams, LL.D., was also a graduate of Trinity College, Oxford, and a scholar of considerable repute. As a lawyer he had gained some reputation for the mastery of legal details. He served on a commission appointed in 1812 to regulate the procedure of vice-admiralty courts abroad. Later, from 1815-24, he served on a similar commission appointed to investigate the courts of justice and ecclesiastical courts of England. In the Ghent commission Adams was given the sole preparation of the despatches which related to maritime war.<sup>62</sup>

In addition to the paper containing their instructions, the British commissioners were provided by their Government with the following papers: full powers, treaty of Paris (1783); treaty of commerce, London

<sup>61</sup> Dictionary of National Biography, XXII., 283-284.

<sup>62</sup> *Ibid.*, I., 108.

(1794); explanatory article, Philadelphia (1796); explanatory article, London (1798); convention, London (1802); convention (not ratified), London (1803); correspondence and proposed treaty (1806-1808); declaration of war (1812); proclamation, London (1814).<sup>63</sup>

<sup>63</sup> MS., British Foreign Office, 5, 102.

## CHAPTER V

### THE OPENING OF PEACE NEGOTIATIONS AT GHENT

The British ministers reached Ghent Saturday evening, August 6, 1814. All of the American ministers had been waiting there a full month, and some of them much longer. On the next day after their arrival, Anthony St. John Baker, secretary of the British mission, called upon Bayard and informed him of the arrival of the British ministers and of their desire to exchange "full powers." It was proposed that the meeting for this purpose should take place at the rooms of the British ministers at the Hotel Lion d'Or the next day at one o'clock. Bayard promised Baker that this communication should be laid before the other commissioners and an answer returned during the evening.<sup>1</sup>

When the Americans learned of the proposal of the British to meet at their hotel they were much disturbed, for they regarded it as a pretension of superiority on the part of the British commissioners for them to set the place for the first meeting. Adams cited international law authority to show that the course taken by the British was the usage of ambassadors to min-

<sup>1</sup> Russell Journals, V., 236-237.

isters of an inferior rank. Bayard also brought forward a case of a similar character when commissioners of Spain and England met at Boulogne in 1600. On that occasion the Spanish commissioners made, and the English resisted, a proposal much like the one that was now made by the British commissioners.<sup>2</sup> Bayard and Gallatin, however, were disposed to take no notice of the matter, as they were averse to obstructing the negotiation with any question of "mere ceremony." Adams proposed that Hughes should call in the evening on Baker and inform him that the American commissioners would be glad to confer and exchange "full powers" at any time the British commissioners would indicate, and at any place other than their lodgings. At Gallatin's suggestion, the phrase, "at any place other than their own lodgings," was changed to "at any place which may be mutually agreed upon." With this change Adams's proposition was agreed to, and Hughes was authorized further, in case any difficulty should arise as to a suitable place, to suggest the Hôtel des Pays-Bas. Hughes delivered this communication, and was promised a reply before one o'clock of the next day. About ten o'clock of that same evening Baker called and informed the American ministers that the Hôtel des Pays-Bas, which had been suggested by Hughes, had been accepted by the British com-

<sup>2</sup> Memoirs of J. Q. Adams, III., 3-4.

missioners, and that they would meet the Americans there at one o'clock the next day.<sup>3</sup>

On the 8th of August, at the hour agreed upon, the commissioners of the two states met at the Hôtel des Pays-Bas. After introductions had taken place and "full powers" been exchanged,<sup>4</sup> Gambier, the British minister first named, addressed the American ministers, expressing the regret which the British nation felt for the existence of the war and the sincere desire of the British Government "that the negotiation might result in a solid peace honorable to both parties."<sup>5</sup> He stated, also, that he and his colleagues were personally very anxious for this desirable object and hoped that they might aid in putting "an end to a state of things so contrary to the interests of the two nations, and to restore again those amicable relations, which he hoped under the blessings of a kind Providence, might advance the happiness of both nations."<sup>6</sup> The other British ministers merely stated that Lord Gambier had expressed their own sentiments.

John Quincy Adams, the first named of the American commissioners, replied with similar words of assurance as to the strong desire of the American people and Government that the negotiation might result in

<sup>3</sup> Russell Journals, V., 237-238.

<sup>4</sup> Memoirs of J. Q. Adams, III., 4-5.

<sup>5</sup> Commissioners to Monroe, Aug. 12, 1814; American State Papers, For. Rel., III., 705-707.

<sup>6</sup> Russell Journals, V., 238.



a solid peace. Adams promised for himself and colleagues to bring to the discussion the "disposition to meet every sentiment of candor and conciliation with the most cordial reciprocity."<sup>7</sup>

After these preliminary remarks, Henry Goulburn, whom the British commissioners had appointed to open the conference, expressed the opinion that it would be proper for him to mention those points which seemed likely to be brought into discussion, and upon which the British commissioners had been instructed. He added that if any of these which he should mention should be considered unnecessary by the American ministers, or if there were others not mentioned which they might consider essential, that fact should be stated.<sup>8</sup> Goulburn presented three principal subjects for discussion in the negotiations.

I. "The forcible seizure of mariners on board merchant vessels, and, in connection with it, the claim of His Britannic Majesty to the allegiance of all the native subjects of Great Britain."

II. "The Indian allies of Great Britain to be included in the pacification, and a definite boundary to be settled for their territory." This point was made a sine qua non.

III. "A revision of the boundary line between the United States and the adjacent British colonies."

<sup>7</sup> Memoirs of J. Q. Adams, III., 5.

<sup>8</sup> Russell Journals, V., 239.

After having stated these three points, the British minister added that the British Government would not accord again to the United States the special fishing privileges within the limits of British jurisdiction, granted by the treaty of 1783, without requiring an equivalent.<sup>9</sup> These points having been stated in accordance with their instructions,<sup>10</sup> the British ministers inquired whether the American ministers were able to entertain a discussion of them.

John Quincy Adams, in reply, repeated the points mentioned by the British in order to learn whether he rightly understood them. He questioned them as to whether the British Government thought the impressment of seamen and the incidental claim of allegiance a point proper for discussion. Goulburn replied that the British Government did not regard it as a necessary point to be discussed, but had included it as a point which might naturally be supposed to arise in the course of the negotiation. Bayard questioning the intention of Great Britain with reference to the boundary line, Goulburn stated that Great Britain did not have in view the acquisition of any territory, but that the revision was intended to remove the causes for disputes over the uncertainties of the present boundary.

<sup>9</sup> Commissioners to Secretary of State, Aug. 12, 1814; American State Papers, For. Rel., III., 705-707.

<sup>10</sup> Castlereagh to Commissioners at Ghent, July 28, 1814; Memoirs and Correspondence of Castlereagh, X., 67-72.

With reference to the Indian territory which had been proposed, it was stated that there was no intention of making any change in the nature of the sovereignty of the Indians over the country set apart for them. Adams, after going over each point, said he wished to have an opportunity to confer with his colleagues as to their instructions before giving a reply and before proposing other points which they might consider proper to bring forward.<sup>11</sup> The British wished an immediate answer as to whether the American ministers were instructed upon the point which they had made a *sine qua non*; but upon the refusal of the Americans to reply,<sup>12</sup> they assented to the request of Adams, and the conference adjourned until eleven o'clock the following day. It was agreed that the conferences should be held alternately at the lodgings of each mission and that the British ministers should meet at the lodgings of the Americans the next day at the hour determined upon.

Of the four subjects brought forward by the British ministers for consideration, impressment was the one which they cared least to discuss, while to the Americans it was the most important. By turning the negotiations to the questions of Indian pacification and territory, of boundaries and fisheries, subjects not entering into the causes of the war, the British hoped

<sup>11</sup> Russell Journals, V., 241-242.

<sup>12</sup> Memoirs of J. Q. Adams, III., 6.

that they might score a diplomatic victory. Aside from the point of diplomacy, however, these questions had been pressed upon the attention of the British Government in a very practical way. With reference to the Indian pacification, promises had been made to the Indians by the British generals which obligated the British Government to see that the Indians were included in the pacification; and the Indian territorial question had been presented to the Government as a practical means of defending the British possessions in North America. There were also commercial reasons for the establishment of a permanent Indian territory, which were urged by merchants in London who carried on trade with the Indians. These merchants in a memorial to the Government, under the pretext of safeguarding the interests of the Indians, suggested four different boundary lines, either one of which would have given a large increase of territory to Great Britain. They pointed out the commercial importance to England of the trade with the Indians, the annual export of the fur trade before the war being £250,000, and the duties to the Government amounting to from £20,000 to £50,000.<sup>13</sup>

The subject of boundary, besides being of interest to these London merchants, was also of much con-

<sup>13</sup> Memorial of Committee of Merchants trading with the Island of Newfoundland and its Dependencies to Liverpool; MS., British Foreign Office, 5, 103.

cern to British subjects in the Provinces. Almost constant conflict had arisen between British and American subjects over boundaries which the treaty of peace had inaccurately or indefinitely described. Again, the fisheries were of great importance to the British subjects, and it was with much displeasure that they saw American fishermen sharing in these within their own territorial waters. When it became known that peace negotiations were to be carried on by the two countries, memorials and petitions were sent to the British Government by the inhabitants of Nova Scotia and by London merchants urgently imploring that in the new treaty American fishermen be excluded from the privileges granted by the treaty of 1783.<sup>14</sup>

The American ministers, after returning to their rooms from the first meeting, deliberated upon the answer that they should make and the points that they should propose at the next conference. Despatches from the Secretary of State, written June 25 and 27, were received that same evening. The instructions of June 25 stated that the rights to the fisheries "must not be brought into discussion"; if they were insisted upon, negotiations were to cease. The commissioners were given authority to propose an article postponing impressment to a future negotiation. The despatch of June 27 allowed the commissioners, if

<sup>14</sup> Petition of the Committee of the Inhabitants of Nova Scotia to Bathurst; MS., British Foreign Office, 5, 103.

it should be found necessary, to omit altogether any stipulation on the subject of impressment. Adams, Gallatin, and Hughes, according to Adams's memoirs, worked half the night deciphering these despatches; but as they gave instructions on no new points, merely giving greater latitude in regard to those already authorized, they did not affect the reply which had already been determined upon. The next day the American mission met at Bayard's room at ten o'clock, and agreed finally upon the answer and the points to be presented to the British ministers.

At the second meeting of the two missions, Adams, for the American commissioners, stated that upon the first point, that of impressment, which had been suggested by the British plenipotentiaries, the American ministers had instructions; that upon the second point, the Indians, they had received no instructions; but that they had reason to believe that commissioners had already been appointed to treat of peace with the Indians, and, in any event, the war with them would cease upon peace being made with Great Britain; that upon the third point, namely, boundaries, they had instructions; and that upon the fourth, "the fisheries," they were without instructions. Adams presented two additional subjects which the American commissioners were instructed to propose for discussion. These were: a definition of blockade and, as far as could

be agreed upon, neutral and belligerent rights; and secondly, claims to indemnity for captures both before and during the war. The British were informed that there were a number of other points which the American ministers were at liberty to bring into discussion, either in the negotiation of the peace, or in that of a treaty of commerce, which, in case of a propitious termination of the conference, they were also authorized to conclude. The Americans maintained that it was not to be expected that they should have been instructed upon the second and fourth points proposed by the British commissioners, since these had never formed a subject of dispute between the two states, and had not been the causes of the war. Adams, however, expressed the willingness of his colleagues to hear what the British had to say upon these points. They would then decide whether these, under any possible form, could be brought within the scope of their discretionary powers, though he admitted that they did not deem it likely. The British inquired whether these points might not, under the general powers possessed by the American commissioners, be made the subject of a provisional arrangement. The American ministers believed that they could agree to no such proposition. They stated that their Government had had no thought of such points being brought forward by Great Britain; not only because these did not enter into the causes of war, but because in the tenor of

Lord Castlereagh's proposition of the negotiation no expectation of such points could be found.<sup>15</sup>

The British ministers replied that Castlereagh's despatch was not a place for the suggestion of the points for discussion, as that could not have contemplated ulterior events, and it was not to be expected that they would leave out the Indians, their allies, in any peace settlement that should be made. Gallatin again assured the British that a peace with the Indians would inevitably follow that with Great Britain, and that a peace might have already been made; as to a boundary line between the United States and the Indians, inasmuch as there had always been one, it was natural to suppose there would be one at the close of the war.<sup>16</sup>

The American ministers maintained that the proposed stipulation of an Indian boundary was without precedent in the history of the European states. In reply to this, the British held that the Indians were to be regarded in a certain sense as an independent people, and that this position was indicated by the treaties made with them by both Great Britain and the United States. The Americans explained that there was an important difference between treaties made with the Indians living within the territory of the United States, and a treaty made respecting them with a foreign Power which had

<sup>15</sup> Russell Journals, V., 243-246.

<sup>16</sup> Ibid., 246-247.



acknowledged the territory on which the Indians resided to be a part of the United States.<sup>17</sup>

The British ministers, when asked if they intended an acquisition of territory from the Indians, or any change in the attributes of sovereignty which the Indians had heretofore enjoyed, replied that they did not. Later, in reply to a question of Bayard as to the purpose of the boundary line, and whether the United States was to be restricted from purchasing land of the Indians, the British minister, Adams, said that they wished the Indian territory set apart as a sort of a barrier between the possessions of Great Britain and the United States, to prevent friction between the peoples of the two countries; that the Indians were to be restricted from selling land both to the United States and to Great Britain, but that they might sell to others. The British were asked whether it was to be understood that the pacification and the settlement of a permanent boundary for the Indians were both made a sine qua non. They answered that they were.<sup>18</sup> In this the British ministers went beyond their instructions, for these had merely suggested the proposal to the American ministers of an arrangement for the mutual guarantee of the Indian possessions without expressing it in the objectionable terms proposed by the

<sup>17</sup> American Commissioners to Monroe, Aug. 12, 1814; American State Papers, For. Rel., III., 705-707.

<sup>18</sup> Russell Journals, V., 247-248.

British ministers.<sup>19</sup> The American ministers regarded the proposition for Indian boundaries, as it had been given by the British, as tantamount to a cession of rights, both of sovereignty and of soil, and were unanimously opposed to granting it.<sup>20</sup>

After offering a temporary adjournment, to give the Americans time for consultation, which was declined, the British ministers stated that, inasmuch as the American ministers were not instructed to discuss the points mentioned, including the one which had been presented as a *sine qua non*, and as the Americans thought it unlikely that they could agree to any provisional article, they would be obliged to report to their Government and await further instructions. The American ministers expressed their regret at the danger of breaking off the negotiation at its very commencement, and said that, although they were unable to urge the discussion on the points of greatest difficulty, they were confident that a disclosure of the views on both sides on that subject would lead to a satisfactory understanding. If a reference to the British Government was necessary, it was urged that as short a time as possible might intervene.<sup>21</sup>

It was agreed, in order to prevent misconception on

<sup>19</sup> Castlereagh to Commissioners at Ghent, July 28, 1814; *Memoirs and Correspondence of Castlereagh*, X., 67-72.

<sup>20</sup> Commissioners to Monroe, Aug. 12, 1814; *American State Papers*, For. Rel., III., 705-707.

<sup>21</sup> *Russell Journals*, V., 248-249.

the points which had been proposed by each side, that a protocol should be drawn up, and that for this purpose each commission should prepare a written statement of what had passed at the two meetings. The joint mission arranged to meet the next day at twelve o'clock at the lodgings of the American ministers to compare the respective protocols. That evening, at the request of the other ministers, Adams worked out a draft of a protocol, which, after being subjected to corrections by Bayard, Gallatin, and Clay, was given to Secretary Hughes to copy.<sup>22</sup> The commissioners of the two states met on the 10th to compare their respective protocols. The one drafted by the American ministers was more explanatory than that of the British, since it stated the reasons why instructions had not been given by the American Government upon the subjects of Indian boundaries and fisheries. This caused much discussion, the British ministers contending that the protocol should contain merely a statement of the points proposed by either side, without introducing anything of an explanatory or argumentative character. The American ministers admitted that a protocol "ought not to contain reasons at large, which might be urged during the conference, but that important facts ought to enter into it and the reasoning merely explanatory of them."<sup>23</sup> It was at last agreed that the statements of each commission as made by

<sup>22</sup> *Memoirs of J. Q. Adams*, III., 10.

<sup>23</sup> *Russell Journals*, V., 249-250.

itself, upon the points which were considered likely to enter into the negotiations, should constitute the protocol.<sup>24</sup>

The proposed protocol of the American commissioners had included what the members of the British commission had said with respect to the Indian territory's being made a barrier between the British possessions and those of the United States and to the prohibition of the sale of Indian lands within the said territory to the United States and Great Britain. The British commissioners, while not denying the truth of these statements, objected to the insertion of them in the protocol. They said that these explanatory remarks had been made by them frankly and gratuitously and ought not to enter into the protocol. After a vigorous attempt on the part of the American ministers to have these statements retained, they finally yielded, on condition that the British ministers would consent to a slight modification of their second point. This proposition was to read as follows: "That the peace be extended to the Indian allies of Great Britain, and that the boundary of their territory be definitely marked out as a permanent barrier between the dominions of Great Britain and the United States. An arrangement on this subject to be a sine qua non of a treaty of peace."<sup>25</sup> This modification, the American

<sup>24</sup> Russell Journals, V., 250-251.

<sup>25</sup> Protocol of Conference, Aug. 8, 1814; American State Papers, For. Rel., III., 708.

ministers considered, made the point more definite. The Americans were determined, if unable to negotiate terms of peace, to have the issues between the two states clearly set forth to the world.

The British ministers objected to the statement in the proposed protocol of the Americans that they had offered to discuss all the points suggested; that the British had declined so doing unless the American ministers would agree to a provisional article; and that they had proposed to adjourn the conference until they should be able to obtain further instructions.<sup>26</sup> The British stated that they had acted in a spirit of candor and frankness, which could not continue if the American ministers made such use of their free communication. The American ministers, accordingly, agreed to strike out everything to which the British made objection. It was, however, distinctly understood that in reporting to their respective Governments neither party was to be limited to the protocol agreed upon; but it might state any of the facts and circumstances in connection with the conferences during the negotiations.<sup>27</sup> The protocol at last was agreed to; and it was given to the secretaries of the two missions to draw up, accordingly, from the two drafts. The British ministers despatched a messenger the same night with a communication to their Government asking information as

<sup>26</sup> Commissioners to Monroe, Aug. 12, 1814; American State Papers, For. Rel., III., 705-707.

<sup>27</sup> Russell Journals, V., 253-254.

to whether the negotiations should continue if the American ministers adhered to their determination not to sign a provisional article; and if so, upon what points.<sup>28</sup>

In the interval of waiting for the British reply, the American ministers were busily engaged for a week in preparing a despatch to be sent to their Government. Adams and Bayard each prepared a draft, but neither was wholly acceptable to all the mission. The task was then assigned to Gallatin to revise the draft that Bayard had presented and to alter and amend it so that it might receive the concurrence of all the mission. Russell had suggested many amendments and alterations in the drafts of Bayard and Adams, which the latter regarded as trifling and inconsequential. The final draft of the despatch drawn up by Gallatin, with some amendments, was adopted August 17.<sup>29</sup>

The American ministers, on the 13th, sent a note to the British ministers requesting them to secure from the Lords in Admiralty a cartel for the *Chauncey*, Captain Angus commanding. The captain was directed to be ready to sail for the United States on the 25th with the despatches.<sup>30</sup> Dallas was to be sent as

<sup>28</sup> British Commissioners to Castlereagh, Aug. 8, 1814; MS., British Foreign Office, 5, 102.

<sup>29</sup> Memoirs of J. Q. Adams, III., 15-16.

<sup>30</sup> American Commissioners to British Commissioners, Aug. 13, 1814; MS., Bureau of Indexes and Archives, "Treaty of Ghent."

the bearer of these. The British ministers forwarded the request for a cartel to their Government, and the requisite papers were at once returned to them.<sup>31</sup> The evening of the 13th the Americans gave a dinner at their hotel to the British ministers and distinguished citizens of Ghent.<sup>32</sup>

Lord Castlereagh arrived at Ghent on the 18th on his way to the Congress of Vienna. He remained until the morning of the 20th. He brought with him new instructions which were more pleasing to the British ministers than the original ones had been.<sup>33</sup> Lord Castlereagh in his conference with the British ministers had objected, however, to the proposition which they had made to the American ministers relative to the Indian territory, that neither state should acquire by purchase or otherwise any of the Indian lands in the territory mentioned. ~~Castlereagh said that this would prevent the American Government from taking land from the Indians by conquest, which might become necessary as punitive measures.~~<sup>34</sup>

On the morning of the 19th, Baker, secretary of the

<sup>31</sup> British Commissioners to Castlereagh, Aug. 14, 1814; MS., British Foreign Office, 5, 102.

<sup>32</sup> Amsterdam Courant, Aug. 27, 1814, quoted in Weekly Messenger, Oct. 14, 1814.

<sup>33</sup> Goulburn to Bathurst, Aug. 19, 1814; Wellington's Supplementary Despatches, IX., 188-189.

<sup>34</sup> Ibid.

British mission, called upon the American ministers and invited them to a meeting at the hotel of the British ministers that afternoon at three o'clock.<sup>35</sup> At that meeting Goulburn presented the substance of the instructions which had just been received. He stated that it was with surprise that the British Government had learned that the American ministers were not provided with instructions with reference to Indian pacification and boundary; and that the least that they could require was that the American ministers should consent to a provisional article on that subject. Such article would be subject to the approval of the American Government, and if it failed to be ratified the treaty should be null and void.<sup>36</sup> Discussion upon any other point was declared useless until the American ministers should consent to sign the proposed article. A permanent Indian boundary, as well as Indian pacification, was again stated as a *sine qua non*, while the instructions had insisted only on the Indian pacification. A fuller explanation was made at this time of the purpose of the proposed Indian boundary. It was declared to be chiefly for defense, to furnish a barrier between the territory of the two states. Provision against the purchase of Indian lands by the United States or by Great Britain was again declared to be

<sup>35</sup> Russell Journals, V., 259.

<sup>36</sup> American Ministers to Monroe, Aug. 19, 1814; American State Papers, For. Rel., III., 708-709.



essential. As a boundary for the Indian territory, the British ministers proposed the lines of the treaty of Greenville, subject to modifications to be mutually agreed upon.<sup>37</sup>

The British ministers had three propositions to make with respect to the settlement of the boundary between the possessions of the United States and Great Britain: I. "The United States should hereafter keep no armed naval force on the western lakes from Lake Ontario to Lake Superior, both inclusive; that they should not erect any fortified or military post or establishment on the shores of those lakes; and that they should not maintain those which were already existing." II. "The boundary line west of Lake Superior, and thence to the Mississippi, to be revised; and the treaty-right of Great Britain to the navigation of the Mississippi to be continued." III. "A direct communication from Halifax, and the province of New Brunswick, to Quebec to be secured to Great Britain."<sup>38</sup>

The first of these propositions was made on the ground that since Great Britain was the weaker Power in North America her possessions were in danger of attack from the United States while that state held possession of the Great Lakes. The British ministers

<sup>37</sup> Russell Journals, V., 259-261. British to American Commissioners, Aug. 19, 1814; American State Papers, For. Rel., III., 710.

<sup>38</sup> American Ministers to Monroe, Aug. 19, 1814; American State Papers, For. Rel., III., 708-709.

stated, upon being questioned, that it was the intention that Great Britain should have all the rights with respect to the lakes which ~~the~~ United States was to relinquish; but that both states should enjoy the commercial navigation of the lakes as heretofore. With reference to the western boundary line proposed, the American ministers asked if it was not the line from the Lake of the Woods to the Mississippi that was intended. The British replied that it was "the line from Lake Superior to the Mississippi." When questioned how the third subject was to be accomplished, the British ministers stated that a cession should be made to Great Britain of that portion of territory intervening between New Brunswick and Quebec which cut off direct communication between the British provinces.<sup>39</sup>

After mentioning these points, the British ministers added that if the conference should be broken off in consequence of the refusal of the American ministers to agree to a provisional article, Great Britain would not be bound, upon a renewal of negotiations, to abide by the terms which she now proposed; "but would be at liberty to vary and regulate her demands according to subsequent events, and in such manner as the state

<sup>39</sup> Russell Journals, V., 261-263, 265. British to American Commissioners, Aug. 19, 1814; American State Papers, For. Rel., III., 710.

of the war, at the time of renewing the negotiations, might warrant."<sup>40</sup>

The British ministers were questioned as to the intention of Great Britain relative to Moose Island and other islands in Passamaquody Bay which had recently been taken by the British. They replied that as Great Britain had always considered them hers she certainly would not give them up or allow them to be brought into discussion. Bayard asked whether the proposition relative to the lakes was also a *sine qua non*. Doctor Adams replied that one *sine qua non* had been given, and when that had been disposed of it would be sufficient time to take up the consideration of the other.<sup>41</sup> No reference was made at this time to the fisheries, as the instructions to the British ministers had been silent on that point. The American ministers having left out of their discussions the subject of the fisheries, it was thought by the British ministers that the Americans were prepared to yield that point.

The American ministers requested that, before giving their reply, the British ministers would reduce their propositions to writing. This they consented to do, and promised to transmit the note to the American

<sup>40</sup> American Ministers to Monroe, Aug. 19, 1814; American State Papers, For. Rel., III., 708-709. *Memoirs of J. Q. Adams*, III., 18.

<sup>41</sup> *Russell Journals*, V., 263-264. American Commissioners to Monroe, Aug. 19, 1814; American State Papers, For. Rel., III., 708-709.

mission at an early hour.<sup>42</sup> The official note from the British ministers was received the following day. A copy of this, together with an account of the proceedings of the conference of the 19th, drafted by Gallatin, was sent at once to America by the *John Adams*.<sup>43</sup>

Hopes of a successful termination of the negotiation were no longer entertained by the American ministers.<sup>44</sup> They expected now merely to exchange the usual formalities for closing the negotiation. Clay alone thought it barely possible that the negotiations might be continued through the lowering of the British demands; but how faint the hope that even he entertained is shown in a letter which he wrote at this time to Secretary Monroe. "The hope of their retracting their demands is," said he, "too remote to warrant the smallest calculation upon it; the reliance will be much better placed on the firmness and energy of the American people to conquer again their independence."<sup>45</sup> It was the unanimous opinion of the American ministers that Great Britain's policy was to consume as much

<sup>42</sup> Goulburn to Bathurst, Aug. 21, 1814; Wellington's Supplementary Despatches, IX., 188-189.

<sup>43</sup> Russell Journals, V., 265.

<sup>44</sup> Russell to George Blake, Aug. 19, 1814; Russell Papers, MS., No. 1726. Memoirs of J. Q. Adams, III., 21.

<sup>45</sup> Gallatin to Monroe, Aug. 20, 1814; Monroe Papers, MS. Writings of Gallatin, I., 637-640. Clay to Monroe, Aug. 18, 1814; Russell Papers, MS., copy of Clay's Journals, 1781.

time as possible before the termination of the negotiation, in order that some decisive victory might be gained in the war which would make it easier for her to insist upon her demands. This, it was deemed, was the object of the *sine qua non*, that time might elapse while the American ministers were waiting for new instructions upon the Indian question, which would be necessary if that point should be insisted upon. Clay thought that if the American ministers refused to refer the question the British would not break off negotiation on this point.<sup>46</sup>

For four days the American ministers labored over the note which was to be their answer to the one presented by the British ministers on the 19th. It was in these conferences among themselves, in decisions of procedure, and in the preparation of notes and despatches, that the greatest difficulties were encountered, owing to the size of the mission and the temperamental differences and personal antipathies of its members. Adams, as the head of the mission and a diplomat of wider experience than the others, expected to be deferred to in the preparation of state papers. He was soon shaken out of this illusion, as has been seen in the previous discussions over the despatches to the Secretary of State.

The preparation of the note to the British ministers

<sup>46</sup> Clay to Monroe, Aug. 18, 1814; Russell Papers, MS., copy of Clay's Journals, 1781.

illustrates the hard, conscientious work that the commissioners performed. Adams spent an entire day making a draft of the answer; Gallatin and Clay both prepared notes, and these were read and discussed on the 21st. With reference to his own draft Adams says: "I found, as usual, that the draft was not satisfactory to my colleagues. On the general view of the subject we are unanimous, but in my exposition of it, one objects to the form and another to the substance of almost every paragraph. Mr. Gallatin is for striking out every expression that may be offensive to the feelings of the adverse party. Mr. Clay is displeased with figurative language, which he thinks improper for a state paper. Mr. Russell, agreeing in the objections of the two other gentlemen, will be further for amending the construction of every sentence; and Mr. Bayard, even when agreeing to say precisely the same thing, chooses to say it only in his own language."<sup>47</sup> Adams's note was given to Gallatin to revise, and on the 23d this note, with corrections and amendments, together with the paragraph prepared by Clay and an entire new draft made by Bayard, were all read and discussed. The secretary of the mission was directed from all of these to make a new draft. Adams says that about one half of his note was stricken out and nearly one half the remainder was left for consideration.<sup>48</sup> On the 24th the mission

<sup>47</sup> *Memoirs of J. Q. Adams*, III., 21.

<sup>48</sup> *Ibid.*, 22.

had a short meeting in the morning and one after dinner which lasted until eleven o'clock at night. Adams records that they erased, patched, and amended until all were wearied, though none of them were "satiated with amendment." He states that not more than one fifth of his original draft was retained in the final draft, with "scraps from Gallatin, scraps from Bayard, and scraps from Clay, all of whom are dissatisfied with the paper as finally constructed." On the 25th the note was finally adopted and presented to the British ministers.

Ten days passed with no word from the British commissioners. On the 23d the Americans had dined with the British at the Intendant's. At this dinner the conversation of the Americans made it evident that they did not expect the negotiations to continue. Clay informed Goulburn that they intended to refer to their Government for instructions, and that they considered the British proposition equivalent to a demand for the cession of territory. Bayard also told Goulburn that peace could not result. He intimated to him that such proposals as the British had ~~made not only~~ destroyed all prospects of peace, but ~~sacrificed~~ the Federal party, to which he belonged, ~~to its~~ political adversaries. He maintained that a conciliatory spirit would have strengthened that party, which, he intimated, it was to the advantage of the British interest to support, and to make peace was the only method of effectually accom-

plishing that result. He assured him that Great Britain had nothing to fear on the ~~part~~ of Canada, upon whatever terms peace was made. He also gave him to understand that there would be no trouble about allegiance and impressment; ~~but~~ the British demands were such as the United States ~~never~~ could grant.<sup>49</sup> On the 27th the British ministers gave a return dinner to the American ministers, but no assurance was expressed of any more conciliatory terms on the part of the British Government.

The note from the American ministers to the British ministers bearing the date of August 24 called attention to the fact that Castlereagh in his despatch of November 4, 1813, to the American Secretary of State had written that Great Britain was willing to negotiate with the United States "for the conciliatory adjustment of the differences subsisting between the two States," with the purpose of securing a successful termination "upon principles of perfect reciprocity, not inconsistent with the established maxims of public law, and with the maritime rights of the British empire." Since this was the avowed purpose of the negotiation, the American commissioners said it was not to be expected that the United States would go beyond the terms stated by Lord Castlereagh, and furnish them with powers respecting the Indians. That the British Government

<sup>49</sup> Goulburn to Bathurst, Aug. 23, 1814; Wellington's Supplementary Despatches, IX., 189-190.



had not changed their purpose, the note declared, was to be inferred from the statement made by the British ministers at the first conference to the effect "that no events subsequent to the first proposals for this negotiation had, in any manner, varied either the disposition of the British Government, that it might terminate in a peace honorable to both parties, or the terms upon which they would be willing to conclude it."<sup>50</sup>

It was well known, the Americans said, that the differences between the two states were wholly of a maritime nature, and that the boundary of the Indian territory never had been a subject of dispute between Great Britain and the United States. "Neither the principles of reciprocity, the maxims of public law, nor the maritime rights of the British empire could require the permanent establishment of such boundary." Again, the proposition to demand a permanent territory for the Indians was "contrary to the acknowledged principles of public law, and to the practice of all civilized nations." It was not founded on "perfect reciprocity," and it was wholly unnecessary. It was further declared that the universal practice of European Powers possessing territories in America had been to allow the interference of no foreign state in matters arising between the acknowledged sovereign of the territory and the Indians dwelling therein. The Indians could

<sup>50</sup> American to British Ministers, Aug. 24, 1814; American State Papers, For. Rel., III., 711-713.

not be considered an independent Power, especially by Great Britain, which, by the treaty of 1783, solemnly acknowledged them to be within the dominions of the United States, and, further, the Indians themselves had acknowledged the ultimate sovereignty of the United States in the treaty of Greenville, 1795; for in that treaty and subsequent Indian treaties the relationship with the United States was thus defined: "that the Indian tribes shall quietly enjoy their lands, hunting, planting, and dwelling thereon so long as they please, without any molestation from the United States; but that when those tribes, or any of them, shall be disposed to sell their lands, they are to be sold only to the United States; that, until such sale, the United States will protect all the said Indian tribes in the quiet enjoyment of their lands against all citizens of the United States, and against all other white persons who intrude on the same; and that the said Indian tribes again acknowledge themselves to be under the protection of the said United States, and of no other Power whatever." It was maintained that the proposed stipulation was not reciprocal, for while professing to place both nations on an equality as to the prohibition imposed respecting the purchase of Indian lands, it, in reality, affected only the United States, which alone had enjoyed that privilege heretofore. Further, the measure proposed was unnecessary, for the United States had always adopted a liberal policy toward the

Indians. There was no desire to continue the war with the Indians; and peace with them would inevitably follow peace with Great Britain.<sup>51</sup>

The note stated that the American ministers would assent to a provisional article "engaging that each party will treat for the Indians within its territories, include them in the peace, and use its best endeavors to prevent them from committing hostilities against the citizens or subjects of the other party"; and that another provisional article might also be assented to "which should preclude the subjects or citizens of each nation respectively from trading with the Indians residing in the territory of the other. But to surrender both the rights of sovereignty and of soil over nearly one-third of the territorial dominions of the United States to a number of Indians, not probably exceeding twenty thousand," was beyond their powers, and they assured the British plenipotentiaries that any arrangement for that purpose would be at once rejected by their government.<sup>52</sup>

It was further declared with reference to the military occupation of the lakes by Great Britain that that was equally inadmissible, and it was impossible to discover by what rule of "perfect reciprocity" the United States could be called upon "to renounce their equal right of maintaining a naval force upon those lakes, and of for-

<sup>51</sup> American to British Ministers, Aug. 24, 1814; American State Papers, For. Rel., III., 711-713.

<sup>52</sup> Ibid.

tifying their own shores, while Great Britain reserves exclusively the corresponding rights to herself."<sup>53</sup>

It was denied that Great Britain could, in point of fact, as far as military preparation went, be regarded as the weaker Power in North America in comparison with the United States; it was held that, upon the argument of "weaker Power," the United States might with more consistency make the demand which Great Britain was making of the United States. It was asked whether Great Britain would be willing, "in relation to another frontier, where she has the acknowledged superiority of strength," to consent to reduce her equipment to a condition of equality with the United States.<sup>54</sup>

With reference to granting land for communication between Nova Scotia and New Brunswick, and the change in the western boundary proposed by the British ministers, the note stated that the American ministers had "no authority to cede any part of the territory of the United States, and to no stipulation to that effect will they subscribe." The objections to the propositions of the British ministers, colored by the personal feeling of the Americans, is summed up in the following words of their note: "The conditions proposed by Great Britain have no relation to the subsisting differences between the two countries; they are in-

<sup>53</sup> American to British Ministers, Aug. 24, 1814; American State Papers, For. Rel., III., 711-713.

<sup>54</sup> *Ibid.*

consistent with acknowledged principles of public law; they are founded neither on reciprocity, nor on any of the usual bases of negotiation, neither on that of *uti possidetis* nor of *status ante bellum*. They would inflict the most vital injury on the United States, by dismembering their territory, by arresting their natural growth and increase of population, and by leaving their northern and western frontier equally exposed to British invasion and to Indian aggression; they are, above all, dishonorable to the United States, in demanding from them to abandon territory and a portion of their citizens; to admit a foreign interference in their domestic concerns, and to cease to exercise their natural rights on their own shores and in their own waters." A treaty founded on such terms, it was maintained, could not be permanent. Instead of settling the differences it would give rise to new ones, "sow the seeds of a permanent hatred, and lay the foundation of hostilities for an indefinite period." The United States desired peace on "terms of reciprocity honorable to both countries," and only upon such terms would peace be permanent. In concluding the note the American ministers offered to agree to a treaty which should be based upon the principle of status ante bellum, and which should reserve to both parties "all their rights, in relation to their respective seamen."<sup>55</sup> This concession, in willingness to agree upon a treaty which should

<sup>55</sup> American to British Ministers, Aug. 24, 1814; American State Papers, For. Rel., III., 711-713.

be silent upon the subject of impressment, had been proposed by Secretary Monroe in his latest instructions to them, June 27.<sup>56</sup>

This retrogression in the policy of the American Government was due to the following circumstances: The European conflict had ended, and the actual practice of impressment for the time being had ceased; the American Government was experiencing extreme difficulty in obtaining men and money for the war; and information had been received from Bayard and Gallatin of the determined attitude of Great Britain upon impressment. In view of these facts, President Madison had called a meeting of his Cabinet and had submitted the question whether a treaty of peace, silent upon the subject of impressment, should be authorized.<sup>57</sup> All the Cabinet members present were unanimous in favor of such authorization, and the American ministers were instructed accordingly.

The American note of August 24 went to the length of offering to discuss all points involved in the differences which had interrupted and might again tend to interrupt the harmony of the two countries, without making the conclusion of peace depend upon agreement upon these. The American ministers with spirit refused to consider the propositions contained in the

<sup>56</sup> Monroe to American Commissioners, June 27, 1814; American State Papers, For. Rel., III., 704-705.

<sup>57</sup> Writings of Madison (1865 ed.), III., 408.

British note of August 19, and declared that these would only be a fit subject of deliberation when it became necessary to decide upon the expediency of an absolute surrender of national independence.<sup>58</sup>

The American ministers expected an immediate reply which would terminate the negotiations; but not until September 4 did they receive an answer. Meantime despatches had been sent by George M. Dallas to America announcing the failure of the negotiations.

On the day before the American note was received, the British ministers had written to their Government asking whether, in case the American ministers refused to accept the basis of *uti possidetis*, even for a provisional article, they should break off negotiations.<sup>59</sup>

The note of the American ministers was sent to Castlereagh, then in Paris, for information as to the nature of the reply that should be made.<sup>60</sup> He answered that no written reply should be given to the American note save under instructions of the British Cabinet; but that a verbal communication should be made to the Ameri-

<sup>58</sup> American to British Ministers, Aug. 24, 1814; American State Papers, For. Rel., III., 711-713.

<sup>59</sup> Goulburn to Bathurst, Aug. 24, 1814; Wellington's Supplementary Despatches, IX., 190-191.

<sup>60</sup> Goulburn to Castlereagh, Aug. 26, 1814; Wellington's Supplementary Despatches, IX., 193-194. British Commissioners to Castlereagh, Aug. 26, 1814; MS., British Foreign Office, 5, 102.

can ministers apprising them of the fact that their note had been referred to the British Government.<sup>61</sup>

Castlereagh at once sent the despatches and letters from the British ministers to the Prime Minister, Lord Liverpool. In a personal letter he stated that in his discussions with the British ministers at Ghent he had proposed that the proposition on Indian limits should be given less peremptorily, especially the phrase "it is equally necessary"; but that the British ministers had opposed any change for fear of appearing to weaken. Upon the words "purchase or otherwise" he had also cautioned them from committing themselves without further authority. He considered the whole territorial question one of expediency, not to be insisted on if it would result in a rupture of the negotiations. For the war to be continued on the part of Great Britain for territorial aggression, as it would be represented, would make the war popular in America. Castlereagh made the suggestion of proposing to the American ministers a provisional article for them to sign on the subject of Indian pacification, separate from the question of territorial limits.<sup>62</sup>

Before the papers from Castlereagh reached London, the Cabinet had had under advisement despatches

<sup>61</sup> Castlereagh to Goulburn, Aug. 28, 1814; Wellington's Supplementary Despatches, IX., 196.

<sup>62</sup> Castlereagh to Earl Liverpool, Aug. 28, 1814; Wellington's Supplementary Despatches, IX., 192-193.



and notes which had been sent direct from Ghent, and the general outline of the answer proposed by the British ministers was approved; but the peace ministers were criticized in so presenting the British policy in their notes as to have made a rupture possible on the territorial question alone. The members of the Cabinet expressed the fear that a break on that basis would unite all the parties in America in favor of the continuance of the war. It was declared important to place the responsibility of the rupture, if it was to take place, clearly upon the American ministers.<sup>63</sup> The recent military successes in Canada, however, mitigated against the Cabinet's consenting to lower appreciably the British demands.

When sending the American note to their Government the British ministers had enclosed a projected reply.<sup>64</sup> In the letter of the same date they expressed embarrassment over the words "perfect reciprocity," which the Americans had insisted were used in Castlereagh's note of November 4, 1813, but which were not found in the copy which had been given them of the

<sup>63</sup> Liverpool to Castlereagh, Sept. 2, 1814; Wellington's Supplementary Despatches, IX., 214. Liverpool to Wellington, Sept. 2, 1814; Wellington's Supplementary Despatches, IX., 211-213.

<sup>64</sup> Goulburn to Castlereagh, Aug. 26, 1814; Wellington's Supplementary Despatches, IX., 193-194. *Memoirs and Correspondence of Castlereagh*, X., 99-100. *British Commissioners to Castlereagh*, Aug. 26, 1814; MS., British Foreign Office, 5, 102.

document in the Foreign Office relating to the same matter of the date of October 30, 1813. The ministers requested a copy of the letter of November 4, 1813. The American version was shown to be correct, when the British note was later published.

In view of the British insistence upon the establishment of an independent Indian territory as a *sine qua non*, the American commissioners gave up all hope of agreement upon a treaty. They decided to give up their house at the end of the month, though later they concluded to keep it until the middle of September, and Adams discussed with his colleagues the advisability of his return to St. Petersburg. The two missions gave the usual formal dinners in anticipation of the closing of a negotiation.

## CHAPTER VI

### THE INDIAN QUESTION AND THE CANADIAN BOUNDARY

The American ministers, after sending their note of August 24, were kept waiting a week before any word was returned from the British ministers, and then there came only the announcement that the American note had been referred to the British Government. The Americans had attributed the delay to the desire of the British ministers "to give a greater appearance of deliberation and solemnity to the rupture." As a matter of fact, it only illustrated what was shown throughout the negotiations: that the British commissioners were mere puppets in the hands of the British Cabinet.

On the first of September, Adams had an extended conversation with Goulburn about the British proposals. This interview was by no means reassuring to Adams, and in his report of it to Secretary Monroe he wrote: "In the whole tenor of his discourse I perceived not only an inflexible adherence to the terms which we had rejected, but, under the cover of a personal deportment sufficiently courteous, a rancorous animosity against America which disclosed that there was nothing

like peace in his heart.”<sup>1</sup> In their conversation Goulburn explained Great Britain’s necessity of insistence upon the Indian boundary as being not, primarily, for the sake of the Indians, but for the protection of Canada. He stated that disarmament on the lakes by the United States was likewise essential to the safety of Canada.<sup>2</sup> To this Adams replied, that Canada was in no danger from the United States; that the American Government had no intention of conquering and annexing that province, and that the invasion of Canada had been a war measure, and nothing more. Goulburn referred to the proclamation of General Hull as showing the intention of the American Government with reference to Canada. To this Adams answered that the American Government was no more responsible for Hull’s proclamation than the British Government was responsible for Admiral Cochrane’s proclamation. Adams presented here the charge against British officers of taking away negroes and selling them in the West Indies. The mention of this fact had been authorized by the Government instructions of January 28. Adams wrote that “the whole of this conversation was on both sides perfectly cool and temperate in the manner, though sometimes very earnest on

<sup>1</sup> J. Q. Adams to Monroe, Sept. 5, 1814; MS., Bureau of Indexes and Archives, Russian Despatches, II., No. 139.

<sup>2</sup> Ibid.

mine, and sometimes with a hurry of reply and an embarrassment of expression on his, indicating an effort to control the disclosure of feelings under strong excitement."<sup>3</sup> In reporting the conversation to the Secretary of State, Adams said that, while the avowed purpose of the Indian boundary was changed from the Indians to the security of Canada, the real one, though not acknowledged, was discernible, namely, "no other than a profound and rankling jealousy at the rapid increase of population and settlement in the United States, and an impotent longing to thwart their progress and to stunt their growth. . . . With this temper prevailing in the British commission it is not in the hour of their success that we can expect to obtain peace upon terms of equal justice and reciprocity."

On September 2 the British ministers received from their Government a draft<sup>4</sup> of the reply to be presented to the American ministers. Permission was granted to make such alterations in the style, and in the facts, if they were incorrectly stated, as might seem proper to the British ministers.<sup>5</sup> Two days later, the British note, with a few slight changes, was sent to the American ministers. It was received by Gallatin and given

<sup>3</sup> Adams to Monroe, Sept. 5, 1814; MS., Bureau of Indexes and Archives, Russian Despatches, II., No. 139.

<sup>4</sup> Bathurst to Goulburn, Sept. 1, 1814; Wellington's Supplementary Despatches, IX., 245-249.

<sup>5</sup> Goulburn to Castlereagh, Sept. 5, 1814; MS., British Foreign Office, 5, 102.

to Adams. The following day it was read at a meeting of all the American ministers. Adams records in his diary the sentiment with which it was received: "Mr. Bayard pronounced it a very stupid production. Mr. Clay was in favor of answering it by a note of half a page. I neither thought it stupid nor proper to be answered in half a page."<sup>6</sup> Gallatin proposed to analyze its contents and to make a minute of the reply that should be made. Clay was so thoroughly disgusted that the following day he sent a note to the British commissioners asking for a passport to return home.<sup>7</sup>

The British note was no more conciliatory than the last one of the American ministers. It stated that, while the war was ostensibly declared by the United States on account of the maritime claims of Great Britain, it had not been carried on for these purposes only; that the United States had on the contrary, by declaration and act, shown a disposition to wage war for the annexation of Canada; that it was on this account that the boundary question had assumed so much importance; that, inasmuch as the United States had aimed at acquisition and aggrandizement, it was no more than right that Great Britain should retain territory which British valor had placed in her power;

<sup>6</sup> *Memoirs of J. Q. Adams*, III., 31.

<sup>7</sup> Goulburn to Bathurst, Sept. 5, 1814; *Wellington's Supplementary Despatches*, IX., 221-222.

that the United States had manifested such a spirit of aggrandizement by "their progressive occupation of the Indian territories, by the acquisition of Louisiana, by the more recent attempt to wrest by force of arms from a nation in amity the two Floridas, and, lastly, by the avowed intention of permanently annexing the Canadas to the United States," that it became necessary for the British Government to endeavor to secure its dominions in North America against the attempts at conquest on the part of the United States.<sup>8</sup>

The note again presented the argument of the "weaker Power," in accordance with which it claimed that Great Britain's command of the lakes was essential to the defense of Canada. With respect to the boundary of the district of Maine and of the Northwest, the British ministers maintained that the objection made by the American ministers to the effect that they had no authority to cede any part of the territory of the United States was inconsistent with their previous declaration "that they were instructed to treat for the revision of their boundary lines." The boundary of the district of Maine, it was stated, had not been definitely determined, and the one claimed by the United States was not the one which was contemplated in the treaty of 1783. With reference to the northwestern frontier, a proposal for settling the boundary, which had been mutually acknowledged to be a necessity, could not

<sup>8</sup> British to American Ministers, Sept. 4, 1814; American State Papers, For. Rel., III., 713-715.

be regarded as a demand for a cession of territory "unless," as the note sarcastically added, "the United States are prepared to assert that there is no limit to their territories in that direction, and, that availing themselves of the geographical error upon which that part of the treaty of 1783 was formed, they will acknowledge no boundary whatever; then, unquestionably, any proposition to fix one, be it what it may, must be considered as demanding a large cession of territory from the United States."<sup>9</sup> The note stated that, with respect to the boundary west from the Lake of the Woods, the line which was agreed to in the unratified treaty of 1803 would be acceptable to the British Government; or their ministers were prepared to discuss any other proposed boundary line.<sup>10</sup>

The Indian boundary was insisted upon as essential to the permanent tranquility and security of the Indian tribes. The renewal of the stipulations contained in the treaty of 1795 between the United States and the Indians, respecting the boundaries of the Indian territory, would be regarded as sufficient on that subject. The note disclaimed that the proposition respecting the Indian boundaries had been arbitrarily demanded without offering an opportunity for discussion and mutual agreement upon the boundaries to be fixed. If, as the American note affirmed, an agreement to the

<sup>9</sup> British to American Ministers, Sept. 4, 1814; American State Papers, For. Rel., III., 713-715.

<sup>10</sup> *Ibid.*



proposal would cede one third of the territory of the United States, then "the American Government itself must have conveyed it away by the Greenville treaty of 1795." That treaty, it was asserted, by its provisions placed the Indians on the plane of independent nations. For the American Government to declare that all the Indian nations within its boundary lines were subjects of the United States, "living there upon sufferance on lands which it also claims the exclusive right of acquiring," was to threaten the extinction of the Indian nations. Great Britain would be willing to enter into the same engagement with respect to the Indians within her own territory as she had proposed to the United States, and, therefore, the proposition could not be regarded as not being reciprocal. Neither could it, with any truth, be considered "as contrary to the acknowledged principles of public law, as derogatory to the honor, or inconsistent with the rights of the American Government."<sup>11</sup>

The British ministers, as they had been instructed, sought to throw the responsibility for the rupture upon the American ministers. They closed their note with these words: "It will be for the American plenipotentiaries to determine whether they are ready now to continue the negotiations, whether they are disposed to refer to their Government for further instructions,

<sup>11</sup> British to American Ministers, Sept. 4, 1814; American State Papers, For. Rel., III., 713-715.

or, lastly, whether they will take upon themselves the responsibility of breaking off the negotiation altogether."<sup>12</sup>

This arrogant language was used at a time when the British Cabinet confidently expected that the war would speedily be brought to a close with the aid of the additional forces that had been despatched to America, and that the United States, in utter defeat, would sue for peace upon any terms. Lord Castlereagh, Secretary of Foreign Affairs, and the leading figure in the Cabinet, had successfully dictated terms at the treaty of Paris. He saw no reason why, in what he considered to be a minor affair, he should not be as peremptory.

The British ministers reported to their Government a draft of the note which they had presented to the Americans. They stated that no change was likely to be proposed by the American ministers, who, they declared, had no real intention of making peace. The negotiation, they said, had been entered into "with the sole view" of gaining some advantage which would draw the people of the United States together in conducting the war, and the question of Indian boundary had been taken by them for this object. This point, it was asserted, was shown by a letter written by Craw-

<sup>12</sup> British to American Ministers, Sept. 4, 1814; American State Papers, For. Rel., III., 713-715. British Commissioners to Castlereagh, Sept. 5, 1814; MS., British Foreign Office, 5, 102.

ford, American minister at Paris, to Count Hoogendorf of Holland, a copy of which, sent to the British ministers by Lord Clancarty, British minister to Holland, was now enclosed for the information of the British Government. The letter of Crawford had attempted to show how Great Britain had violated the rights of neutrals in her method of warfare, and especially in her system of blockade, while the United States had conscientiously respected the rights of neutral states.<sup>13</sup>

September 6 the American mission met, and the analysis of the British note, together with a minute of points made by Gallatin, was discussed. It was voted to authorize Gallatin to draft an answer to be presented at the next meeting. Bayard was the only one of the mission that was inclined to make any concession. He proposed to offer for the Indians the status quo ante bellum, or a declaration that the treaty of Greenville should not be considered as abrogated by the war. Clay and Adams were for no stipulation respecting the Indians in a treaty with Great Britain. Gallatin proposed that they should offer to refer to their Government a stipulation for mutual disarmament on the lakes, while Adams opposed this as being outside of their instructions. He maintained that Great Britain had a sufficient guar-

<sup>13</sup> Copy of a letter of W. H. Crawford to Count Hoogendorf enclosed in a letter of Goulburn, Sept. 5; MS., British Foreign Office, 5, 102.

antee for the security of Canada in her ability to attack the commerce of the United States.<sup>14</sup>

On the 7th, the discussion upon the British note was renewed. Gallatin's draft was presented and referred to the other members individually for amendments and additions. Adams having insisted upon introducing paragraphs complaining of the employment of the Indians by Great Britain as contrary to the laws of civilized warfare, it was voted that he should prepare a paragraph on that subject. Upon the question relative to the Indian boundary Adams also made a draft of several paragraphs. On the 8th, a final draft was made from the sketches of all. Adams's paragraph respecting Indian rights was adopted. The one concerning the employment of savages was adopted in substance with amendments. On the 9th, the concluding paragraph and a few others, which had been previously unsettled, were adopted. The note was copied by Hughes and taken to the British ministers the same afternoon.<sup>15</sup>

The American note of the 9th indignantly disclaimed any unjust action on the part of the United States in the acquisition of Louisiana, or in the treatment of Spain in the question of the Florida boundaries. It also denied the charge that the annexation of Canada had been the declared object of the United States Government. The note asserted that the United States had from the commencement of the war been

<sup>14</sup> *Memoirs of J. G. Adams, III.*, 31-32.

<sup>15</sup> *Ibid.*, 32-33.

willing to make peace without obtaining any cession of territory, on the sole condition of the satisfactory settlement of maritime rights; that the United States could not consent to leave its own frontier unprotected in order to protect the frontier of Canada; that an invasion of Canada on the part of the United States was impracticable, for it could not occur without leaving the Atlantic shores exposed to more destructive attacks by the British fleet; that Great Britain was, at the commencement of the negotiation, in possession of only two ports on the lakes, and that this did not give her a claim to any large cession of territory founded on the right of conquest should the United States be willing to treat on such a basis, which it was not, for the principle of status quo ante bellum was the only basis to which it would consent.<sup>16</sup>

The justice of including allies in the treaty of peace and of providing for their security was not questioned; but the right of Great Britain, "according to those principles and to her own practice, to interfere in any manner with Indian tribes residing within the territories of the United States, as acknowledged by herself, to consider such tribes as her allies, or to treat for them with the United States,"<sup>17</sup> was denied. In reply to the statement of the British ministers that the American claim to sovereignty over the Indians and

<sup>16</sup> American to British Ministers, Sept. 9, 1814; American State Papers, For. Rel., III., 715-717.

<sup>17</sup> Ibid.

their lands within the American borders was unheard of and invalid, the American note proceeded to show that it was not inconsistent with the acknowledged principles and practices of other countries, and notably of Great Britain herself. This could be seen in all the colonial charters from that of Virginia to that of Georgia. The treaty of Utrecht, which described the Indians of the five nations as subject to the dominion of Great Britain, and the treaty of the Cherokees, by which the members of that tribe were granted the privilege of living where they pleased, were evidence that Great Britain regarded itself as sovereign over Indian lands. The British proclamation of 1763, which declared "all purchases of lands from the Indians null and void, unless made by treaties held under the sanction of His Majesty's Government," had no meaning "if the Indians had the right to sell their lands to whom they pleased." The various boundary lines were settled in former treaties without consulting the Indians, and those now proposed showed that the Indians were not considered as independent nations.

Again, it was shown that the relationship claimed by the United States toward the Indians did not originate with the treaty of Greenville; that that treaty neither took from the Indians the right, "which they had not, of selling lands within the jurisdiction of the United States to foreign Governments or subjects, nor ceded to them the right of exercising exclusive jurisdiction

within the boundary line assigned." It was merely declaratory of the public law in relation to the parties, founded on principles previously and universally recognized. The note declared that there was nothing in the treaty of Greenville to warrant the proposition which the British ministers had made, and showed that the reciprocity proposed in the last British note respecting Indian territories, by which each state should agree to purchase no lands from the Indians within its own territory, was merely nominal, being, in actual fact, unequal. It was held to be of no concern what policy Great Britain adopted in her territory; but the United States could not consent to any interference in its own policy respecting the Indians living within its borders. The acceptance of a permanent Indian boundary line, beyond which settlement should never be made, would arrest the natural growth of the country, and leave the frontier forever exposed to savage incursions.<sup>18</sup>

It was repeated that there was no objection to the question of peace with the Indians; but that no provision in the treaty was necessary to secure that result. Following upon a peace with Great Britain, it was said, a peace would at once be made with the Indians, restoring them to the same position in which they were before the commencement of the war, provided the Indians themselves would consent to a peace. The

<sup>18</sup> American to British Ministers, Sept. 9, 1814; American State Papers, For. Rel., III., 715-717.

note spoke with abhorrence of the atrocities committed by the Indian allies of Great Britain, and suggested, as being of more benefit to the Indians than a boundary provision, an article by which Great Britain and the United States should reciprocally stipulate, in the future, if at war with each other, to refrain from employing Indians.<sup>19</sup>

In regard to cession of territory for a way of communication between New Brunswick and Nova Scotia, the American ministers maintained in their note that there was a very great distinction between their agreement to discuss revision of boundary lines and the question of the cession of any portion of territory; that their declaration "did not imply that they were instructed to make any cession of territory in any quarter, or to agree to a revision of the line, or to any exchange of territory, where no uncertainty or dispute existed." They denied that there was any uncertainty in the treaty of 1783 with respect to the boundary of the district of Maine; and said that it never had been known "that the British plenipotentiaries who signed that treaty had contemplated a boundary different from that fixed by the treaty," and that nothing more was required to ascertain definitely the boundary than that it be surveyed in accordance with the provisions of the treaty. It was insisted that upon this point the instructions of the American ministers did

<sup>19</sup> American to British Ministers, Sept. 9, 1814; American State Papers, For. Rel., III., 715-717.



not enable them to treat, particularly as the territories in question were a part of the State of Massachusetts.<sup>20</sup>

The American ministers offered no objection to a discussion of the northwestern boundary after the question of the Indian boundary should be settled. They concluded their note by reiterating their definite rejection of both the proposition to establish a permanent Indian boundary and that to secure "the exclusive military possession of the lakes to Great Britain." They considered it useless to refer these subjects to their Government. With this understanding, they offered to continue the negotiation, and "to discuss all the points of difference, or which might hereafter tend in any degree to interrupt the harmony of the two countries."<sup>21</sup>

The American ministers when sending their note of the 9th had almost no hope of peace resulting from the negotiations. They gave the British ministers to understand that unless their demands were lowered a rupture would ensue. At a dinner on the 15th, Gambier having asked Adams if he would return immediately to St. Petersburg, the American minister's reply was: "Yes; that is, if you send us away."<sup>22</sup>

The British ministers, upon the receipt of the American note of the 9th, referred it to their Government,

<sup>20</sup> American to British Ministers, Sept. 9, 1814; American State Papers, For. Rel., III., 715-717.

<sup>21</sup> *Ibid.*

<sup>22</sup> Memoirs of J. Q. Adams, III., 36.

adding these words: "As the American ministers have stated that they consider both propositions contained in our note of the 19th of August, and the 4th of September, inadmissible, and that they deem it useless to refer to their Government any arrangement containing either of these propositions, we request to be favored with instructions as to the line of conduct which it may be proper to adopt with respect to the continuance of the negotiation."<sup>23</sup> The British Cabinet viewed with disappointment the apparent certainty of failure of the negotiations. They felt that their commissioners had pressed their demands too far, and that more conciliatory means must be adopted. While the British Government were not eager for peace with the United States until British arms should have gained some brilliant victories in America, yet they wished to avoid a rupture in the peace negotiations over terms which were sure, when known, to react against them, and to be the means of uniting the people in the United States in the prosecution of the war. A draft of a note of reply to the American ministers was drawn up and forwarded to the British ministers the 16th of September.<sup>24</sup>

<sup>23</sup> British Ministers to Castlereagh, Sept. 9, 1814; MS., British Foreign Office, 5, 102.

<sup>24</sup> Draft of note from Foreign Office to British Ministers, Sept. 16, 1814; Wellington's Supplementary Despatches, IX., 263-265.

The British ministers received the despatch from their Government September 19.<sup>25</sup> After making a few slight changes in the wording, they presented the note to the Americans the same day. The note, reverting again to the question of the boundary line of the district of Maine contended that the American ministers, by assuming the right to decide what boundary was, or was not, a subject of dispute, had rendered their powers useless, or exceedingly partial in their operation. It stated that the refusal of the American ministers to allow any boundary line between their territory and that of the Indians, because it would arrest the natural growth of the United States, was sufficient proof of a spirit of aggrandizement on the part of the United States. The declaration was repeated concerning the avowed purpose of the United States to annex Canada. This was asserted on the basis of the proclamation made by General Hull, July 12, 1812, and that by General Smyth, November 17, 1812. Copies of these proclamations were transmitted along with the British note.<sup>26</sup> General Hull's proclamation<sup>27</sup> had urged upon the inhabitants of Canada non-resistance to the American invasion, promising to all such,

<sup>25</sup> British Ministers to Castlereagh, Sept. 19, 1814; MS., British Foreign Office, 5, 102.

<sup>26</sup> British to American Ministers, Sept. 19, 1814; American State Papers, For. Rel., III., 717-718.

<sup>27</sup> Hull's proclamation, July 12, 1812; Russell Journals, V., 439-441.

protection under the Government of the United States, while General Smyth's proclamation to his soldiers contained a definite avowal of the purpose of conquest and annexation.<sup>28</sup>

The charge, which had been made in the American note, that Great Britain had been instrumental in inducing the Indians to withdraw from the protection of the United States and to wage war against it, was strongly disavowed. To prove this fact, it was pointed out that the Indians had been at war with the United States before that Power had declared war against Great Britain. As a result of the war between the Indians and the United States all treaty rights had been abrogated, and in consequence the Indians were no longer under the protection of the United States. It could only be on the supposition that the Indians were subjects of the United States that the American ministers could be authorized to deny the right of Great Britain to treat for the Indians in the peace negotiations; but such claim, it was repeated, was in opposition to the treaties which had been concluded, and particularly that of Greenville, which recognized the sovereignty of the Indians.<sup>29</sup>

The note assumed that the American ministers had received no new instructions since the general pacifica-

<sup>28</sup> Smyth's proclamation, Nov. 17, 1812; Russell Journals, V., 442-445.

<sup>29</sup> British to American Ministers, Sept. 19, 1814; American State Papers, For. Rel., III., 717-718.

tion of Europe, which had materially changed the aspect of the negotiation from what it was when the original instructions had been given. The failure of the American Government to furnish new instructions, it was stated, was a proof of no sincere desire to make peace.<sup>30</sup>

After reaffirming the fixed purpose of Great Britain not to abandon the Indians, her allies, in any peace arrangement, the statement was made that the British Government was willing to sign a treaty of peace with the United States on terms honorable to both parties. "It has not offered," the note said, "any terms which the United States can justly represent as derogatory to their honor, nor can it be induced to accede to any which are injurious to its own"<sup>31</sup>

The note then proceeded to restate the *sine qua non*. This no longer included an arrangement of a permanent Indian boundary and prohibition of the purchase of Indian lands by the United States, to which unalterable objection had been made by the American ministers; but the *sine qua non*, as now given, was limited to securing to the Indians the restoration of peace, with "the rights, privileges, and territories which they enjoyed in the year 1811, previous to the commencement of the war." With reference to the purchase of Indian lands, while the British

<sup>30</sup> British to American Ministers, Sept. 19, 1814; American State Papers, For. Rel., III., 717-718.

<sup>31</sup> *Ibid.*

ministers had been instructed not to include it in a *sine qua non*, they were instructed to propose for discussion an article on the subject by which the two states should reciprocally bind themselves to purchase no lands of the Indians within the boundaries which should be agreed upon. By making this arrangement subject to revision at the expiration of a certain period, it was hoped that the objection on the part of the American ministers to a permanently fixed boundary, beyond which the settlement of the United States should not extend, might be removed.<sup>32</sup>

The British ministry, alarmed at the way the negotiations were tending, in their draft<sup>33</sup> of the note required the British ministers to deny that they had ever intended that the exclusive military possession of the lakes by Great Britain was to be considered a *sine qua non*. The note presented to the American ministers, accordingly, contained this statement. It was followed by the further statement that, whenever the question relative to the pacification of the Indians—which, subject to the explanations already given, was a *sine qua non*—should be adjusted, the undersigned would be authorized to make a final proposition on the subject of Canadian boundaries, “so entirely founded

<sup>32</sup> British to American Ministers, Sept. 19, 1814; American State Papers, For. Rel., III., 717-718.

<sup>33</sup> Draft of note from Foreign Office to British Ministers, Sept. 16, 1814; Wellington's Supplementary Despatches, IX., 263-265.

on principles of moderation and justice, that they feel confident it can not be rejected." This proposition, it was stated, would be made as soon as the American ministers should have consented to "include the Indian nations in the treaty, in the manner above described," and should have declared that they were authorized to treat upon the proposed subject.<sup>34</sup>

The British ministers had, in several instances, changed the wording of the note in a manner which rendered it less conciliatory than the British Cabinet had intended. They were severely criticized by the Ministry when the nature of the changes became known, although it was by no means certain that the commissioners were not acting with the knowledge of the Ministry in most cases. In the draft of a note, September 19, from the Foreign Office the following words had been employed: "It will not insist on any terms which the United States can justly represent as derogatory to their honor," instead of the words, "it has not offered any terms derogatory to their honor." Again, in the statement of the *sine qua non* in the original draft, the British ministers had added after the words, "whenever the question which relates to the pacification of the Indian nations,"<sup>35</sup> the words,

<sup>34</sup> British to American Ministers, Sept. 19, 1814; American State Papers, For. Rel., III., 717-718.

<sup>35</sup> Draft of note from Foreign Office to British Ministers, Sept. 16, [1814]; Wellington's Supplementary Despatches, IX., 263-265.

“which, subject to the explanations already given, is a *sine qua non*,”<sup>36</sup> and further in the same paragraph for the original words, “consented to include the Indian nations in the treaty,” were substituted the words, “consenting to include the Indian nations in the treaty, in the manner above described.”

The last note, as well as those which preceded it, was in harmony with the character of English diplomacy at the beginning of the 19th century. A distinguished American writer has said: “At this time English diplomacy cultivated very few of the arts and none at all of the graces; there is hardly an important state paper in the whole correspondence between England and America from 1806 to 1815, which, if addressed to the United States government today, would not lead to blows.”<sup>37</sup>

The American mission considered the note “overbearing and insulting in its tone.” Though a part of the *sine qua non* was abandoned, the rest was so rigidly clung to that the American ministers were dejected in spirit, believing that peace was utterly impossible. Gallatin was sure that the *sine qua non*, as given by the British ministers, would be rejected by the American Government; yet he considered it a bad point to break off upon. He thought that they

<sup>36</sup> British to American Ministers, Sept. 19, 1814; American State Papers, For. Rel., III., 717-718.

<sup>37</sup> Adams, *Life of Albert Gallatin*, 500.



might be obliged to admit the principle at last. Bayard shared the opinion of Gallatin and wished to break off on some point that would unite the people in support of the war. All agreed to this sentiment. Adams thought it possible that Great Britain might yet abandon her *sine qua non*, and, if not, that it would be no worse to break off on that point than on any other.<sup>38</sup>

The American ministers again intrusted to Gallatin the work of making an analysis of the British note and a minute of the proposed answer. These he presented to the mission on the 21st. Gallatin was further instructed to prepare a complete draft of a reply. This was presented to the mission two days later. Adams also prepared a reply, and from these two the final note was drawn up. Adams records that the arguments with reference to the boundary line of the district of Maine and to the condition of the Indians were largely Gallatin's work, while the reply to the accusatory matter of the British note and the proposed article of amnesty to include the Indians were his own. After new drafts had been made, corrected, and amended from day to day, a final draft was agreed upon September 25. This was copied by the secretary, and on the next day was signed by all. Hughes delivered it at once to the British ministers.<sup>39</sup>

<sup>38</sup> *Memoirs of J. Q. Adams*, III., 37.

<sup>39</sup> *Ibid.*, 38-42.

On the 29th, despatches from Washington reached the mission. Papers were also received containing the account of the treaty of Greenville, July 16, with the Indians. It was proposed by Clay to send at once to the British ministers these extracts from the papers, but the others objected.<sup>40</sup> That evening the American ministers entertained guests to the number of one hundred and fifty. The British ministers, though invited, were not present, having designedly left the city that day to visit Brussels.

The note sent by the American ministers to the British on the 26th contained a strong argument in reply to each of the points of the last British note. It was denied that the American ministers assumed to decide what was or was not a subject of uncertainty and dispute with regard to the boundary of the district of Maine; but it was claimed that, until the British ministers should show that the boundary was a subject of dispute, it was their duty to assume that it was not. The treaty of 1783 was cited to show what were the boundary lines, as agreed upon, and the points upon which questions had arisen. By that treaty the boundary was described to be "a line to be drawn along the middle of the river St. Croix, from its mouth, in the bay of Fundy, to its source, and from its source directly north to the Highlands, which divide the rivers that fall into the Atlantic Ocean from those which

<sup>40</sup> Memoirs of J. Q. Adams, III., 43.

fall into the river St. Lawrence; and thence, along the said Highlands, to the northwesternmost head of Connecticut river." Doubts having arisen as to what river was the St. Croix designated in the treaty of 1783, provision was made in the treaty of 1794 to settle that question. As this was the only point provided for with reference to the northeastern boundary in that treaty, it was natural to infer that there existed no other subject of controversy over the boundary from the source of that river. The note proposed that, since the river and its sources had been determined, a joint commission should now be appointed by the two Governments "to extend the line to the Highlands, conformable to the treaty of 1783." Objection to the British proposition was made because, instead of seeking to ascertain what the boundary was, it required an alteration in the mutually recognized line; this could not be effected without the cession of territory that was unquestionably included within the limits fixed by the treaty of 1783. It was in view of this point that the American ministers had declined to treat. They were, on the other hand, willing to discuss any actual boundary that was uncertain or in dispute.<sup>41</sup>

The statement of the British note "that the United States will admit of no line of boundary between their

<sup>41</sup> American to British Ministers, Sept. 26, 1814; American State Papers, For. Rel., III., 719-721.

territory and that of the Indian nations, because the natural growth and population of the United States would be thereby arrested," was declared untrue. On the contrary, the United States had always secured to the Indians definite boundaries for the land which they inhabited, mutually agreed upon in the treaties between the Indians and the United States. What they did refuse to do was "to assign, in a treaty of peace with Great Britain, a definite and permanent boundary to Indians living within the limits of the United States." The United States never intended to acquire lands from the Indians other than by peaceful means and with their consent, but in this way they did propose to purchase Indian land as the needs of the population required.<sup>42</sup>

With reference to the proclamations of General Hull and General Smyth, copies of which had accompanied the note of the British ministers to the American ministers, the American commissioners stated that these were not to be considered as acts of the American Government any more than the proclamation of Admiral Cochrane was to be taken as an act of the British Government. A copy of Admiral Cochrane's proclamation was enclosed with the note. This proclamation had offered to receive on board British vessels, or at British military posts, any persons wishing to leave the United States, and to give to such persons a choice

<sup>42</sup> American to British Ministers, Sept. 26, 1814; American State Papers, For. Rel., III., 719-721.

either of joining His Majesty's sea or land forces, or of being sent as free settlers to the British possessions in North America, or to the West Indies. Though the negroes were not specifically mentioned in the proclamation, it was well understood that it was they who were intended.<sup>43</sup>

It was again asserted that peace with the Indians would follow that with Great Britain, and that they would be restored to the same condition as before the war. The Americans were, however, unwilling to treat concerning the Indians as allies of Great Britain, for in so doing they would practically admit the Indians to be independent nations, a condition which they refused to accept. To acknowledge the Indians would be to transfer to them all rights of soil and sovereignty over the territory which they inhabited. Further, to do this at the demand of Great Britain would be to transfer the protection of the Indians to that state. The right of protection over the Indians was acquired by the United States, not by treaties with the Indians, as the British ministers had argued, but in consequence of the sovereignty and independence of the United States. Before the treaty of 1783 these Indians, living within the same territory, were regarded as being under the protection of His Britannic Majesty, and had been so treated. When a similar proposition had been made to consider the Indian tribes as inde-

<sup>43</sup> American to British Ministers, Sept. 26, 1814; American State Papers, For. Rel., III., 719-721.

pendent nations, to serve as a barrier between French and English territories in North America, England had immediately rejected it, "on the express ground that the King would not renounce his right of protection over the Indians within his dominions." Great Britain, having recognized the sovereignty of the United States and agreed to its boundaries, ought not to regard any persons or communities within such territory as being independent of the United States.<sup>44</sup>

The American ministers, it was stated, did not require that the British plenipotentiaries should depart from the regular practice of the British nation of insisting upon the inclusion of their allies in terms of peace, for the Indians, not being independent nations, could not be in the true sense allies. Furthermore, the British Government had no authority from the Indians to treat for them, and no power to bind them to agree to accept the peace or to secure the continuance of it. The proposition made by the British ministers looked to the Indians as subjects rather than as allies. It was agreed that Great Britain in her treaties with France in 1763, and with the United States in 1783, had made no provision for the Indians, though in each of these instances the Indians had taken part in the war which preceded the treaty; that the United States was, therefore, pursuing a course consistent with the former practice of Great Britain. The Americans held that

<sup>44</sup> American to British Ministers, Sept. 26, 1814; American State Papers, For. Rel., III., 719-721.

the only basis for considering the Indians in a treaty between the United States and Great Britain would be the principles by which amnesties are stipulated in favor of persons who in time of war have aided the enemy of the state to which they belong. On this basis the American ministers promised to do all they could in securing peace to the Indians, and they offered a stipulation, "that no person or persons, whether subjects, citizens, or Indians, residing within the dominions of either party, shall be molested or annoyed, either in their persons or their property, for any part they may have taken in the war between the United States and Great Britain; but shall retain all the rights, privileges, and possessions which they respectively had at the commencement of the war; they, on their part, demeaning themselves peaceably and conformably to their duties to the respective Governments." The American ministers stated in closing their note that they should be glad to discuss the proposition concerning the Canadian boundary which the British ministers said that they would offer when the Indian question was settled.<sup>45</sup>

This note was forwarded by the British ministers to their Government the same day on which it was received.<sup>46</sup> It was highly objectionable to the British

<sup>45</sup> American to British Ministers, Sept. 26, 1814; American State Papers, For. Rel., III., 719-721.

<sup>46</sup> British Ministers to Castlereagh, Sept. 26, 1814; MS., British Foreign Office, 5, 102.

ministers, who considered that to assent to the American proposition would be to abandon the whole principle upon which their argument with reference to the Indians had been based. In submitting the note to their Government, the British ministers suggested that in the reply there should be, first of all, a specific article with respect to Indian pacification which would be satisfactory to Great Britain. They were opposed to the proposal for the appointment of commissioners to determine the boundary dispute. They thought it would be best to refer as little as possible to the treaty of 1783 as to territorial boundaries, "considering it as founded throughout, in this respect, on very erroneous principles."<sup>47</sup>

Before this note was received by the British Government, news of British successes in America had reached London. The negotiations had been purposely prolonged by the British Cabinet, that an opportunity might be given to hear the results of the new campaign in America.<sup>48</sup> The favorable news made the English people even more desirous of continuing the war, that the United States might be thoroughly punished for what they considered its unwarranted attack upon Great Britain. The London Times, in an editorial of September 16, represented the feeling

<sup>47</sup> Goulburn to Bathurst, Sept. 26, 1814; Wellington's Supplementary Despatches, IX., 287-288.

<sup>48</sup> Liverpool to Castlereagh, Sept. 2, 1814; Wellington's Supplementary Despatches, IX., 214.



which was at this time entertained by the larger part of the English people: "We owe it not only to ourselves but to posterity, in the war provoked by America, and engaged in for the most unjust purposes, to make such an impression upon their fears as shall curb the desire of aggression and conquest for many years to come. America ought in this contest to be fully and explicitly taught that a false neutrality, the sacrifice of character to interest, and a subservience to an ignorant but violent populace are crimes in a government which, though they may promise immediate advantage, must, nevertheless, be followed by merited chastisement, and the loss of those just interests, which they might have permanently secured, had they not in the spirit of rapine grasped at that which justice had closed as the right and property of another."<sup>49</sup>

The British Ministry, however, though they had taken more vigorous measures for prosecuting the war than during the first year of its continuance, and though important successes attended the British arms, were still earnestly desirous of peace. The Government were even more disposed to make peace amid successes than they would have been had events been the reverse.<sup>50</sup> The financial problems of the country also made a speedy peace desirable.

<sup>49</sup> London Times, September 16, 1814.

<sup>50</sup> Liverpool to Wellington and Castlereagh, Sept. 27, 1814; Wellington's Supplementary Despatches, IX., 290.

The news of British victories in America was reported to the British ministers at Ghent by the British Cabinet, and they were instructed to communicate this news to the American ministers. They were at the same time to inform the American ministers that the success of British arms would not affect in any way the purpose of the English Government to secure a termination to the war which should be honorable to both parties; nor would the terms which had been offered with regard to the Canadian frontier be changed by reason of British successes in those parts. The ministers were authorized, in case the American ministers asserted that they had no instructions either to include the Indians in the treaty of peace or to enter into any negotiations with respect to the boundary of Canada and that they were unable to sign even a provisional article on the Indians, to consent that the negotiation should be suspended until the American ministers should receive further instructions from their Government.<sup>51</sup> It was thought that under the circumstances the American Government would now be willing to yield.

The note of the American ministers of September 26 was received at London the 28th. Instructions were not returned to the British ministers with reference to the reply which they were to make until October 5.

<sup>51</sup> Bathurst to Commissioners, Sept. 27, 1814; *Memoirs and Correspondence of Castlereagh*, X., 138-139; MS., British Foreign Office, 5, 101.

These instructions were received at Ghent three days later, October 8, and constituted the note which the British delivered to the American ministers on that same day.

The American ministers during the interval of waiting, in connection with a note which they addressed to the British ministers requesting a passport for the return to the United States of the schooner *Transit* with a bearer of despatches to their Government, had enclosed extracts from papers relative to a treaty which commissioners of the United States had signed with the Indians the 16th of July of that year.<sup>52</sup> A long debate occurred over the question of sending the papers relative to the Indians. Clay thought they should be sent, and also a copy of Admiral Cochrane's refusal to grant a passport to a cartel ship when requested by the Secretary of State. Gallatin and Adams believed that the sending of these papers was improper, especially the newspaper articles, which had no authority in public law.<sup>53</sup>

Expecting that they would be obliged to break off the negotiations, and wishing to justify themselves before the other Powers, the American ministers, while awaiting the reply from the British Government, prepared papers to the Russian and French Governments.

<sup>52</sup> American to British Ministers, Sept. 30, 1814; Russell Journals, V., 460-461.

<sup>53</sup> Memoirs of J. Q. Adams, III., 44.

They had received instructions to this effect from Secretary Monroe.<sup>54</sup> Adams prepared the paper to be sent to the Russian Government, and Clay the one to the French Government. The latter was to be presented through Crawford, the American minister at Paris.

Lord Bathurst in his letter to the British ministers, the 5th of October, enclosed a project of an article respecting Indian pacification. This the ministers were authorized to alter, "without changing the substance or spirit of the article," with respect to any word or phrase which they might think would render it more acceptable to the American ministers. They were instructed to confine themselves wholly to the question of Indian pacification, not even admitting an article on amnesty for disaffected subjects, until the Indian article should be agreed upon. In case the ministers of the United States would agree to sign the article only *sub spe rati*, that is, subject to the sanction of their Government, the British ministers were still authorized to accept it. If the American ministers should propose to suspend the negotiation in order to await further instructions, His Majesty's ministers were authorized to assent. If neither of these propositions were made by the American ministers, the British representatives were to make them, "in order to have

<sup>54</sup> Monroe to American Commissioners, July 9, 1814; MS. Bureau of Indexes and Archives, Unclassified Instructions, VII.

on record that no expedient was omitted in order to prevent the breaking off of the negotiation." In case the American ministers could be induced neither to accept the article nor to suspend the negotiation, for the purpose of referring to their home Government for instructions, the British ministers were instructed to announce that the negotiation was closed and that they would return home.<sup>55</sup>

The note which the British ministers addressed to the American ministers the 8th of October, while designed primarily to present the project of Indian pacification, did not refrain from discussing other topics that had been subjects of controversy in the previous notes between the two commissions.

The first paragraph attempted to show the illegality of the purchase of Louisiana and the spirit of territorial aggrandizement on the part of the United States which that act manifested. The charges of avarice and oppression were reiterated against the United States also in her acquisition of the Florida territory. The British ministers in their last note had complained that the American ministers were acting under instructions which had been given before the pacification of Europe, May 30, 1814, an event which had materially changed the practical consequence of the maritime

<sup>55</sup> Bathurst to Commissioners, October 5, 1814; *Memoirs and Correspondence of Castlereagh*, X., 148-149; MS., British Foreign Office, 5, 101.

questions, with reference to which the American instructions had been mainly given. The American ministers in their note of September 26 had asserted that they had received instructions since the pacification of Europe, and that under these instructions they were acting; and further, that they had informed the British ministers of their later instructions of the 25th and 27th of June. In this note the British denied any recollection of the American ministers having made such communication to them, and held that the note of September 9 distinctly stated that they were acting under instructions of January, 1814. Complaint was made that the American ministers should act under those instructions, if they had any of a later date which were drawn up under changed conditions.<sup>56</sup>

The note declared that, with reference to cession of territory in the district of Maine, all that the British Government required was merely what was requisite to afford communication between Halifax and Quebec. It refused to assign any significance, as far as the present negotiation was concerned, to the proclamation of Vice-Admiral Cochrane, a copy of which proclamation had been enclosed in the last American note; and at the same time it denied that the statement of the American ministers that the proclamations of Generals Hull and Smyth were not authorized by the American Government was conclusive evidence that

<sup>56</sup> British to American Ministers, Oct. 8, 1814; American State Papers, For. Rel., III., 721-723.

annexation had not been intended. The failure to declare a public disapprobation of the acts of these officers, it was maintained, indicated the real attitude of the United States.<sup>57</sup>

The American Government was called upon to give the proof of any attempt by the British Government to incite the Indian nations against the United States before the declaration of war was made. The claim was put forth that instead of inducing the Indian nations to begin the war, as charged in the notes of August 24 and September 9, the British Government had endeavored to dissuade them from commencing it. The note again repeated the argument that the United States in its treaties with the Indians had practically acknowledged their independence. If the United States, as in effect it admitted, maintained that the Indian nations were independent in their relations with the United States, but that they might not form any alliance with a foreign Power which should "entitle that Power to negotiate for them in a treaty of peace," the British held that such claim was without sanction. Such an assumption, claimed by Germany in connection with cities which had cooperated with France, was rejected in the treaty of Münster. The note refused to accept the American claim with reference to the absolute rights of the United States to the territory

<sup>57</sup> British to American Ministers, Oct. 8, 1814; American State Papers, For. Rel., III., 721-723.

of the Indians. The fact that Great Britain in former treaties had not thought it necessary to provide for the pacification of the Indian nations did not preclude her from now negotiating for them. The American contention that the Indians, while not citizens, were not aliens, but were subjects of the United States was assailed.<sup>58</sup>

It was stated that the American ministers had misunderstood the negotiation between France and Great Britain, to which they had referred as showing an example of a refusal of a proposition such as Great Britain was now making; that this proposal of Indian territory between the dominions of Great Britain, made by the French Government, formed no part of an ultimatum. The English Premier, at the time, had not objected to the proposition. It was rather to the proposed line of boundary between the two parties that objection had been made.<sup>59</sup>

The article submitted on Indian pacification, it was held, would remove the two objections made by the American ministers: that the proposal for Indian pacification was not reciprocal, and that, "as the United States could have no security that the Indian nations would conclude a peace on the terms proposed, the objection would be, in effect, unilateral."<sup>60</sup>

The proposed article was as follows: "The United

<sup>58</sup> British to American Ministers, Oct. 8, 1814; American State Papers, For. Rel., III., 721-723.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.



States of America engage to put an end, immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom they may be at war at the time of such ratification, and forthwith to restore to such tribes or nations respectively, all the possessions, rights, and privileges, which they may have enjoyed, or been entitled to, in 1811, previous to such hostilities. *Provided, always,* That such tribes or nations shall agree to desist from all hostilities against the United States of America, their citizens and subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly."<sup>61</sup> The article was made reciprocal as well for Great Britain in regard to the Indians who had been at war with her.<sup>61</sup>

The last paragraph of the British note, stating that the proposed article was their ultimatum, was expressed in rather stronger language than that of the draft which had been sent by the British Cabinet to their ministers. The concluding words were: "Whatever may be the result of the proposition thus offered, the undersigned deliver it as their ultimatum, and now await with anxiety the answer of the American plenipotentiaries, on which their continuance in this place will depend."<sup>62</sup>

<sup>61</sup> British to American Ministers, Oct. 8, 1814; American State Papers, For. Rel., III., 721-723.

<sup>62</sup> Ibid. Goulburn to Bathurst, Oct. 10, 1814; MS., British Foreign Office, 5, 103.

The note was principally the work of Lord Bathurst, with some slight modifications by Lord Liverpool. These both were agreed that the negotiation should be brought to a point. Liverpool had wished to make the charges against the United States respecting the Floridas so strong that it would frighten the American ministers into submission.<sup>63</sup> He stated that there was but one sentiment throughout Europe, which was to the effect that, considering the transaction itself, and the occasion when and circumstances under which it took place, it was to be regarded as "one of the most immoral acts recorded in the history of any country."<sup>64</sup> This declaration was softened somewhat in the note presented. The British note reached the American ministers on the evening of October 8. A reply was framed on the 13th, and presented the day following.<sup>65</sup>

As in the case of each of the other notes, the American mission spent many hours in discussion of the projects for the reply. They all considered it objectionable to be obliged to admit a preliminary article without knowing what the substance of the whole treaty was to be; but none of them were ready to break off on that point. Bayard, who was very anxious for peace, advised the acceptance of the article; Clay

<sup>63</sup> Liverpool to Bathurst, Oct. 1, 1814; Wellington's Supplementary Despatches, IX., 298-299.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Memoirs of J. Q. Adams, III., 52.*

was in favor of rejecting any proposition for disarmament on the lakes. If this article was to be admitted, Clay and Gallatin favored a short reply; Adams thought it should be long, at least as long as the note presented by the British ministers. Adams favored the use of stronger language than the Americans had hitherto used in their notes. He complained because he could not prevail on his colleagues "to insert anything in the style of retort" to the British notes, whose tone, he declared, was "arrogant, overbearing, and offensive."<sup>66</sup>

After four days of discussion, the American ministers decided to accept the article now offered as an ultimatum. There was, however, a difference of opinion as to the manner of its acceptance, whether, as Gallatin suggested, it should be adopted as perfectly conformable to the views of the American ministers themselves, or whether, as Adams urged, it should be made to appear as a great concession, and made for the sake of securing peace. Adams wished also to avow, as the sentiments of the American Government, that the cession of Canada would be for the interest of Great Britain as well as the United States. A paragraph which had been drawn up to this effect was rejected by his colleagues. Adams, Gallatin, and Clay all pre-

<sup>66</sup> Memoirs of J. Q. Adams, III., 51.

sented drafts of an answer. The one offered by Clay, with some modifications, was finally adopted.<sup>67</sup>

After two months of negotiations the settlement of the Indian question had now been reached, and with this obstacle removed, the first prospect of a treaty of peace began faintly to appear.

<sup>67</sup> Memoirs of J. Q. Adams, III., 51-52.

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## CHAPTER VII

### MODIFICATION OF BRITISH DEMANDS

At the time that the American ministers were struggling with the question of the acceptance of the article on Indian pacification and the reply to be made to the British note, public opinion in America, which was to aid materially the work of the peace ministers, was rapidly forming. The capture of Washington on August 24 and the burning of the public buildings by the British called forth general indignation, and the reception of the despatches from Ghent, containing the proposition of the British ministers, aroused the people even more.<sup>1</sup> The war sentiment at once became more pronounced, and even the Federalists acknowledged that peace was impossible under the terms proposed by the British Government.

The despatches brought by George M. Dallas on the *John Adams* reached New York at ten o'clock the evening of October 5. Early the next morning Dallas started for Washington to present the despatches to the Secretary of State.<sup>2</sup> These, accompanied by an

<sup>1</sup> R. M. Patterson to Russell, Nov. 6, 1814; Russell Papers, MS., No. 1708.

<sup>2</sup> New York Spectator, Oct. 6, 1814.

address, were transmitted by Madison to Congress October 10.<sup>3</sup> Congress had been called in secret session to consider the despatches, and to act with reference to new instructions, which were submitted by the President on the 13th.<sup>4</sup> The House of Representatives ordered ten thousand copies of the despatches to be printed and distributed widely.

The public communication of the despatches of the negotiation, before it was known definitely whether or not negotiations were broken off, caused the severest criticism in England. Madison had thus acted in order to unite all parties in a more vigorous support of the Administration in the prosecution of the war, and his plan was, in a large measure, successful. All agreed that the proposals of Great Britain were inadmissible, being inconsistent with the sovereign rights of the United States. Many regarded the terms as absolutely dishonorable and arrogant.<sup>5</sup> The legislature of New York passed a resolution "That the House of Assembly of the State of New York view, with mingled emotions of surprise and indignation, the extravagant and disgraceful terms proposed by the British commissioners at Ghent—that however ardently they may desire the restoration of peace to their country, they

<sup>3</sup> New York Herald, Oct. 13, 1814.

<sup>4</sup> Richardson, Messages and Papers of the Presidents, I., 551.

<sup>5</sup> Providence Patriot, Oct. 24, 1814.

can never consent to receive it at the sacrifice of national honor and dignity—that they therefore strongly recommend to the National Legislature, the adoption of the most vigorous and efficacious measures in the prosecution of the war, as the best means of bringing this contest to an honorable termination, and of transmitting unimpaired to their posterity, their rights, liberty, and independence.”<sup>6</sup>

The popular objections to the terms were well stated in the Philadelphia Aurora of October 24: “It is impossible our commissioners can listen to such terms without indignation, and we feel warranted in saying, that to restrain the United States from treating with the Indians; that to despoil them through Massachusetts, Michigan, Ohio, and the Lakes of their natural frontier and soil; to admit Great Britain into an exclusive right to arm the Lakes and to a military occupation of both shores; to erect an independent savage power on our confines and within our domain; and to curtail our fisheries, sacred by the treaty of 1782, are demands, attempts, or pretensions which the United States will never submit to, but with the loss of her freedom.”<sup>7</sup>

The territorial demands of Great Britain aroused the greatest indignation in the United States. The land that was exacted by Great Britain, either in the form

<sup>6</sup> New York Spectator, Oct. 29, 1814. Federal Republican, Oct. 21, 1814.

<sup>7</sup> Philadelphia Aurora, Oct. 24, 1814.

of a permanent Indian territory or for communication between Halifax and Quebec, it was pointed out, meant the cession by the United States of some 233,000,000 acres, an extent of country larger than England, Wales, Ireland, and Scotland. This territory, it was estimated, was worth, at the government price of land, nearly \$500,000,000.<sup>8</sup>

The Federalist papers, while laying the blame of the ill success of the mission upon Madison, opposed the British pretensions as vigorously as the Republicans. The United States Gazette in an editorial of October 19, 1814, said: "England now turns upon us in the fullness of her ~~wrath~~ and power. No alternative is left us but to resist with energy or submit with disgrace. As the latter is not possible to Americans, we must prepare our minds for an extremely long, arduous, and sanguinary war."<sup>9</sup> The Federal Republican, also, in its issue of October 21, said: "We all agree in opinion that the terms proposed by Great Britain are inadmissible, and that her pretensions as stated by her Commissioners at Ghent ought to be resisted to the last. To be restrained from ever hereafter obtaining land from the Indians by fair and voluntary treaty would be to surrender an essential right of sovereignty and to submit to a degradation which nothing short of conquest ought to impose upon us."<sup>10</sup> Another

<sup>8</sup> Providence Patriot, Nov. 12, 1814.

<sup>9</sup> United States Gazette, Oct. 24, 1814.

<sup>10</sup> Federal Republican, Oct. 21, 1814.



Federalist paper, the Norfolk Ledger, had the following editorial: "Comment is unnecessary; every American head and heart will make the same comment. There is nothing from which some good may not be extracted; our surprise is over; now we know what we have to depend on, and we trust in God, the manly and patriotic spirit of the nation will teach an insolent foe, that a people who in their infancy could break his chains, will in their sturdy youth meet his arrogant demands with firmness, that will prove that they are sons worthy of their illustrious sires. . . . To meet the crisis, requires the united wisdom, talents, and integrity of the nation; and to bring these into operation, party distinctions must cease. The people (as their fathers did in the days of trial) must select men of talents and virtue."<sup>11</sup>

The objections to the British proposals were emphasized differently in different sections of the country. New England took most exception to the question of the fisheries; the Middle and Southern States to the Indian territory and boundary question.<sup>12</sup>

The American commissioners at Ghent had realized that the discord at home was a serious obstacle in the way of securing favorable terms of peace, and they wrote frequent letters to their friends urging them to

<sup>11</sup> Quoted in the National Intelligencer, Oct. 22, 1814, from the Norfolk Ledger.

<sup>12</sup> New York Herald, Oct. 13, 1814.

use all effort to bring about unity in prosecuting the war. Russell in a letter to Henry Wheaton wrote as follows: "Cannot you arouse the country to more generous and united effort? I will not forgive the man who indulges the prejudice of party in times like these. All must rally now in defense of their country. Hope for nothing but what you can command by spirit and energy."<sup>13</sup>

On October 19, Monroe addressed a letter to the ministers approving their action in rejecting the terms proposed by the British ministers. He sent them also copies of the despatches and instructions which had been printed, to be used as they saw fit in Europe. It was thought that the negotiations might have been already closed before the papers reached Ghent, but in case they were not, the American ministers were instructed, provided the British ministers were disposed to agree to the status ante bellum, to make that the basis of a treaty.<sup>14</sup> Gallatin in a letter to Monroe, June 13, had urged this as a basis, inasmuch as no better terms appeared obtainable.<sup>15</sup>

The publication of the British demands upon the

<sup>13</sup> Russell to Wheaton, Oct. 26, 1814; Russell Papers, MS.

<sup>14</sup> Monroe to Commissioners, Oct. 19, 1814; MS., Bureau of Indexes and Archives, Unclassified Instructions, VII. American State Papers, For. Rel., III., 732.

<sup>15</sup> Gallatin to Monroe, June 13, 1814; Writings of Gallatin, I., 627-629. Correspondence of the Commissioners of the Treaty of Ghent; MS., Bureau of Indexes and Archives, Unclassified Instructions, VII.

American commissioners was a most politic stroke on the part of Madison, and resulted, not only in uniting America in stubborn resistance, but also in rendering public sentiment in Great Britain more favorable to the United States.

The ultimatum which was given by the British ministers on October 8 was answered by the American ministers five days later. The American ministers had decided that it would not be wise to break off negotiations upon the Indian article as now proposed; and in their note of the 13th they expressed their willingness to accept the substance of the article which the British ministers had offered, since this proposition left the United States "free to effect its object in the mode consonant with the relations which they have constantly maintained with those tribes . . . and accords with the views uniformly professed by the undersigned of placing those tribes precisely, and in every respect in the same situation as that in which they stood before the commencement of hostilities."<sup>16</sup> The article, it was to be understood, was agreed to subject "to the approbation or rejection of the Government of the United States," inasmuch as no definite instructions had been given them upon the subject. Should peace not ensue, this article was to be of no effect, and was not to be brought forward by way of argument or precedent in any subsequent negotiation.

<sup>16</sup> American to British Ministers, Oct. 13, 1814; American State Papers, For. Rel., III., 723-724.

While endeavoring to make the reply brief, the American ministers could not refrain from discussing some other topics adverted to by the British in their note. The British ministers had made the charge that the acquisition of Louisiana by the United States was illegal, Spain having offered a remonstrance against its cession and the right of France to make it. To this the American note replied that, although the Spanish minister at Washington had made such remonstrance, at that very time orders were given by Spain for the delivery of Louisiana to France. So France was in actual possession of the territory when she disposed of it to the United States.<sup>17</sup>

The American ministers maintained that the argument employed by the British in their last note in denying the existence of an ultimatum respecting an Indian barrier on the part of France to Great Britain in 1761 tended rather to confirm the American statement of September 26. The quotation from a letter of Pitt, that "the fixation of the new limits to Canada, as proposed by France, is intended to shorten the extent of Canada, which was to be ceded to England, and to lengthen the boundaries of Louisiana, which France was to keep," was interpreted as establishing the American position. The purpose of this boundary arrangement, it was held, was to establish what was not to be admitted, that all which was not Canada was

<sup>17</sup> American to British Ministers, Oct. 13, 1814; American State Papers, For. Rel., III., 723-724.

Louisiana, whereby all the intermediate nations and countries, the true barrier of each province, would be given up to France. This, the Americans asserted, was the exact principle supported by them, that is, that the recognition of a boundary gives up to the nation in whose behalf it is made all the Indian tribes and countries within the boundary. In accordance with this principle the United States relied upon the treaty of 1783, which without reservation fixed the boundaries for Indian tribes. The American note further refused to admit what the British had cited in argument, that the German states formed an analogy to the status of the Indians.<sup>18</sup>

In offering to accept the article upon Indian pacification, which had been proposed as an essential preliminary, the American ministers requested the British to present to them a projet of a treaty which should embrace all the points considered essential by Great Britain; and the American ministers agreed on their part to present a contre-projet.<sup>19</sup>

Upon receipt of the American note, the British ministers transmitted it to their Government, asking for further instructions now that the American ministers had accepted their ultimatum.<sup>20</sup>

<sup>18</sup> American to British Ministers, Oct. 13, 1814; American State Papers, For. Rel., III., 723-724.

<sup>19</sup> Ibid.

<sup>20</sup> British Ministers to Castlereagh, Oct. 14, 1814; MS., British Foreign Office, 5, 102.

Two qualifications made by the American ministers in the article were noted in the letter of Goulburn to Bathurst, namely, the stipulation not to consider their acceptance as an argument or precedent in future negotiations; and the statement of their willingness to accept the substance of the article. It was suggested by the British ministers that objection be made to the first qualification, and that the understanding of the article be limited "to its not being obligatory upon either party in a future negotiation."<sup>21</sup> The second qualification it was thought best to leave unnoticed. Uncertainty was expressed as to whether they should accede to the demands of the American ministers for a complete projet or require the Americans to present one first. Information was requested on that point.

The British Government sent instructions, on October 18, to their peace commissioners. This despatch was received at Ghent the 20th, accompanied by letters and papers which communicated unfavorable news of British operations in America.<sup>22</sup> The news disheartened the British ministers, who had counted on British successes to enable them to secure the acceptance of their peace terms by the American ministers. They had attributed the acceptance of the article respecting the Indians to the British victories which had been

<sup>21</sup> Goulburn to Bathurst, Oct. 14, 1814; Wellington's Supplementary Despatches, IX., 344-345.

<sup>22</sup> Goulburn to Bathurst, Oct. 21, 1814; Wellington's Supplementary Despatches, IX., 366.

previously reported, particularly the taking of Washington.<sup>23</sup>

By the despatch of October 18 the British ministers were instructed to reply to the American plenipotentiaries that there were three material points remaining for consideration. There was, first, the subject of the right of naturalization and the question of impressment, and other topics relating to maritime laws. These questions, it was stated, might be altogether omitted if the United States so desired; but, if they were to be inserted in the treaty, Great Britain would insist that these points should be definitely stated, and she would not recede from the position which she had repeatedly declared to be based on the established law on these points.<sup>24</sup>

The second subject was that of the fisheries, with regard to which the British ministers were instructed to say that Great Britain admitted the right of the United States "to fish on the high seas without the maritime jurisdiction of the territorial possessions of Great Britain in North America; that the extent of the maritime jurisdiction of the two contracting parties must be reciprocal; that Great Britain is ready to enter into an arrangement on that point; and that, until any

<sup>23</sup> Goulburn to Bathurst, Oct. 21, 1814; Wellington's Supplementary Despatches, IX., 366.

<sup>24</sup> Bathurst to Commissioners, Oct. 18, 1814; Memoirs and Correspondence of Castlereagh, X., 168-170; MS., British Foreign Office, 5, 101.

arrangement shall be made to the contrary, the usual maritime jurisdiction of one league shall be common to both the contracting parties."<sup>25</sup> They were again instructed to declare that Great Britain could not renew the privilege, granted in the treaty of 1783, of drying and curing fish on the unsettled shores. This privilege, it was maintained, had been annulled by the war, and Great Britain was under no obligation to renew it.

The third point to be considered was that of boundaries. The northwest boundaries, it was stated, might be regarded as settled "by the admission of the American Plenipotentiaries that the British Government is willing to treat on the basis of *uti possidetis*, subject to the modifications for mutual accommodation." The British commissioners were instructed, in case the American commissioners admitted this principle, to proceed to state the "mutual accommodation" which might be entered into conformable to these points: the United States to agree to restore the two forts of Fort Erie and Fort Amherstberg; Great Britain to restore Forts Custine and Mahias, retaining Fort Niagara and Fort Michilimakinac, "leaving the boundary, on the side of the Province of Main (sic), running thus: From the river St. Croix, including Moose Island, which was always a part of New Brunswick, along the line established by the Commissioners in 1798, running

<sup>25</sup> Bathurst to Commissioners, Oct. 18, 1814; *Memoirs and Correspondence of Castlereagh*, X., 168-170; MS., British Foreign Office, 5, 101.



astronomically north, until it is intersected by the river Ristook, up to its source; and then along the high ridge of mountains, and running a westerly course, until they abut upon the heights which formed the present boundary." The British commissioners were instructed to refrain from referring to the topics which had in the previous note been discussed without accomplishing anything further than to promote irritation on each side.<sup>26</sup>

On the 20th, another despatch was sent from the British Foreign Office to the British commissioners. This despatch countermanded that part of the instructions of the despatch of the 18th requiring the British ministers "not to detail the modifications" which they were authorized by their government to propose on the principle of *uti possidetis* until the American ministers should have admitted that principle as the basis of the treaty. The instructions now permitted such explanation with reference to the boundary questions, provided that the American ministers should make a "qualified or provisional admission of that principle." It was further suggested that it might be expedient not to make the other proposition at the outset. A change in the boundary was proposed, that instead of the river St. Croix the river Passamaquoddy

<sup>26</sup> Bathurst to Commissioners, Oct. 18, 1814; *Memoirs and Correspondence of Castlereagh*, X., 168-170; MS., British Foreign Office, 5, 101.

should be taken as the boundary as far as latitude 46 degrees, and this latitude should be continued as the boundary until it reached the boundary of lower Canada. It was to be demanded, in consideration of the superior value of the country restored by Great Britain, that the United States should make a cession of the island of Carleton, near Lake Ontario; and in connection with Michilimakinac the island as well as the fort was to be understood; further a cession of territory, at least five miles wide, around Fort Niagara should be required.<sup>27</sup>

On the 21st, after receiving the instructions of the 18th, the British ministers sent their note to the American ministers. They did not present a complete projet, as the American ministers had requested, but referred to the statement made at the first conference as containing the points which, in the judgment of the British Government, remained to be adjusted.<sup>28</sup>

With regard to the maritime questions it was proposed in this note to waive all stipulations, inasmuch as the maritime pacification of Europe had rendered these questions no longer pertinent. For the view of Great Britain with respect to the fisheries the state-

<sup>27</sup> Bathurst to Commissioners, Oct. 20, 1814; *Memoirs and Correspondence of Castlereagh*, X., 172; MS., British Foreign Office, 5, 101. "The island of Carleton, near Lake Ontario," is one of the islands in the mouth of the St. Lawrence.

<sup>28</sup> British to American Ministers, Oct. 21, 1814; MS., Bureau of Indexes and Archives, "Treaty of Ghent"; American State Papers, For. Rel., III., 724-725.

ment made in the first correspondence was referred to. The matter of the marine league which had been mentioned in the instructions of the 18th was not covered by that statement at the first conference; but the ministers thought it would be better to leave the mention of this until the fisheries should again be brought into discussion. They thought that repetition or detail of the subject of the fisheries might seem to imply a doubt as to the right of Great Britain to act upon her views of the subject.<sup>29</sup> The note stated in regard to the third point, that of boundaries, that it was expected, from the previous discussion, that the northwestern boundary, from the Lake of the Woods to the Mississippi, would be admitted without objection by the United States; that as to the other boundaries, the British Government were willing to accept the basis of *uti possidetis*, inasmuch as the American ministers had objected to the former boundary proposition because it was not based on that principle. The acceptance of the principle of *uti possidetis* was to be "subject to such modifications as mutual convenience may be found to require."<sup>30</sup>

On October 24, the American ministers replied to the British note of the 21st. The note, written by Gallatin, with some suggestions from Bayard and Clay,

<sup>29</sup> British Ministers to Castlereagh, Oct. 24, 1814; MS., British Foreign Office, 5, 102.

<sup>30</sup> British to American Ministers, Oct. 21, 1814; American State Papers, For. Rel., III., 724-725. MS., Bureau of Indexes and Archives, "Treaty of Ghent."

rejected the imputation made by the British ministers that the American ministers on August 24 had suggested the principle of *uti possidetis* as the basis for negotiations, when they had merely remarked that the propositions of the British commissioners "were founded neither on the basis of *uti possidetis* nor on that of *status ante bellum*." It was held that they had specifically stated that they were instructed to treat on the principle of both parties making restoration of whatever territory they might have taken during the war; that it had been previously declared that the American ministers had "no authority to cede any part of the territory of the United States; and that to no stipulation to that effect would they subscribe." The American note explicitly refused to treat upon the basis of *uti possidetis*, or upon any other principle involving a cession of any part of the territory of the United States. It declared again that the American ministers had power to treat only "upon the principle of a mutual restoration of whatever territory may have been taken by either party." The request was repeated that the British ministers should present a projet "embracing all the other specific propositions which Great Britain intended to offer." The American ministers expressed their willingness, if it was so desired, to offer simultaneously a projet on their part.<sup>31</sup>

<sup>31</sup> American to British Ministers, Oct. 24, 1814; MS., Bureau of Indexes and Archives, "Treaty of Ghent"; American State Papers, For. Rel., III., 725.

This note, when referred to the British Government,<sup>32</sup> caused a general feeling of disappointment in London. Lord Liverpool was vexed that the American ministers would not accept the principle of *uti possidetis*.<sup>33</sup> In order to gain time the Government decided to require the American ministers to make a full projet of all the conditions upon which they were ready to make peace.<sup>34</sup> It was evidently expected that the American ministers would advance such extreme claims that Great Britain would feel justified, in the eyes of the world, in breaking off the negotiations.

At Ghent the two missions were dispirited. The British were annoyed that the Americans would make no concessions; the Americans were provoked that the British sought means to prolong the negotiations to gain time.<sup>35</sup> It was believed to be Great Britain's purpose to continue the negotiation until the Congress at Vienna was over, and then to prosecute the war with renewed vigor.<sup>36</sup> Social functions continued, but little

<sup>32</sup> British Commissioners to Castlereagh, Oct. 24, 1814; MS., British Foreign Office, 5, 102.

<sup>33</sup> Liverpool to Wellington, Oct. 28, 1814; Wellington's Supplementary Despatches, IX., 384.

<sup>34</sup> *Ibid.*

<sup>35</sup> J. Q. Adams to John Adams, Oct. 25, 1814; Madison Papers, MS., LIII., 76. Adams to Monroe; MS., Bureau of Indexes and Archives, British Despatches, III., No. 142. Monroe to Adams, Nov. 20, 1814; MS., Bureau of Indexes and Archives, British Despatches, III., No. 143.

<sup>36</sup> Russell to Monroe, Oct. 26, 1814; Monroe Papers, MS., XIV., No. 1804.

cordiality existed between the American and the British ministers. A dinner given by the British to the Americans on the 26th is described by Adams as "dull."<sup>37</sup>

On the 31st, the British ministers returned their answer to the American note of the 24th.<sup>38</sup> The American victories at Plattsburg and Baltimore, and the growing opposition of the British people to the war led the Ministry to soften their policy in their new note. In this note the British ministers took the ground that their note of October 21 had been in reality a projet of the points which remained to be treated of in the negotiation. They insisted that the American ministers should present a contre-projet containing all the objections which they had to offer to the points submitted by the British ministers. They desired also a statement of "such further points as the Government of the United States consider to be material." The British ministers stated that they had no further demands to make and no other stipulations upon which they were required to insist than those previously given. They requested the American ministers to present specific propositions upon which they were instructed to sign a treaty.<sup>39</sup>

That there were many and difficult problems in-

<sup>37</sup> *Memoirs of J. Q. Adams*, III., 58.

<sup>38</sup> *British to American Ministers*, Oct. 31, 1814; MS., Bureau of Indexes and Archives, "Treaty of Ghent"; *American State Papers*, For. Rel., III., 726.

<sup>39</sup> *Ibid.*

involved in the negotiations may be seen from the series of questions which was directed to the Secretary of State by Gallatin at this period of the negotiation. These questions were as follows:—

I. Would it be proper to break on the point of the privilege of trading with the Indians granted to the British in the treaty of 1794?

II. Should the right of preserving an unlimited naval force on the lakes be insisted upon?

III. Should they insist upon the renewal of the rights to the fisheries as defined by the treaty of 1783, or should they rest the rights upon the American construction of the treaty which said that it had not been abrogated by the war?

IV. Was an agreement upon the northern boundary of the territory of Louisiana necessary, or should a proviso be inserted that the article on the north-western boundary, from the Lake of the Woods to the Mississippi, should not affect the boundary of Louisiana?

V. Might the boundaries of Louisiana be assumed without referring to them?

VI. If a boundary was to be fixed for Louisiana, what should it be?

VII. If Great Britain, agreeing in general to mutual restoration of territory, should except the settlement on the Columbia River, what should be done?

VIII. What should be the claim respecting the

country between the Rocky Mountains and the Pacific Ocean?

IX. Should consent be given to an arrangement for the appointment of commissioners to decide upon the question of territorial possession of the islands in Passamaquoddy Bay? If so, how should the commission be constituted, and should insistence be made on the restitution of the islands until the question was settled?

X. With reference to territorial desires by Great Britain in the northern part of the district of Maine, the boundary line to which, the British claimed, was uncertain, should consent be given to the appointment of commissioners to settle such boundary?

XI. If an exchange of territory were proposed, how far could that be agreed to, in view of the claim of Massachusetts to the possession of said territory?

XII. If a maritime war should be renewed in Europe, what steps were to be taken relative to the subject of impressment?<sup>40</sup>

Not only were the American ministers occupied with such questions as these, but they were also engaged in writing letters and drawing up papers to place before the representatives of the various European countries; and Gallatin, at least, concerned himself with questions of the internal as well as foreign policies of the United

<sup>40</sup> Gallatin to Monroe, Oct. 26, 1814; Monroe Papers, MS., XIV., 1806.



States. In the same letter in which he propounded so many diplomatic questions he expressed his views on the financial and military situation in the United States. Gallatin thought that the war was likely to continue some time and that, as the United States could make no loans in Europe, a deficiency would occur. To meet this he made the following suggestions:—

I. To extend indirect international taxes as far as practicable.

II. To limit nominal loans and to borrow on stock at a rate not to exceed eight per cent.

III. To apply exclusively the moneys arising from these two sources to loans and revenues, to the payment of the civil list, interest on the public debt, and the support of the regular army and navy and of the militia employed on offensive operations.

IV. Not to increase the Treasury notes receivable on payment of taxes and payable one year after date; but, to meet deficiencies, to issue long term notes not legal tender, bearing interest at six to eight per cent. These to be funded if the war should continue.

V. With reference to the military situation, Gallatin advised that the States should be authorized to raise state troops for self-defense, and that these, as well as the militia called for defensive purposes, should be paid and supported by the States respectively, the United States ultimately reimbursing the expense, after the

war. Unless such suggestions should be adopted to relieve the financial situation, Gallatin apprehended an overissue of paper money. Another means suggested was the creation of a national bank and the making of loans on the Government lands.<sup>41</sup>

These suggestions of Gallatin were called out by the urgency of the financial and military situation in the United States. The Government began the war with inadequate financial measures, and the policy of short term loans and issue of paper money had brought the country to a financial crisis. The raising of soldiers was also difficult. The uncertain value of the pay, the ill success that had generally followed the land forces in the war, and above all the absence of great patriotic zeal contributed to the smallness of the enlistments. All sorts of propositions were made in Congress for the raising of soldiers. That patriotic motives were largely wanting is shown by the attempts to present attractive financial ones. One of these propositions was that every ten men should provide a substitute for a year at a time, paying fifty dollars each, while the United States Government would give a bounty of one hundred and twenty-four dollars, and eight dollars a month. At the end of a year's service one hundred and sixty acres of government land were also to be granted to each soldier thus serving.

<sup>41</sup> Gallatin to Monroe, Oct. 26, 1814; Monroe Papers, MS., XIV., 1806.

The American ministers, after sending their note of October 24, had prepared a joint letter to Secretary Monroe and several private letters. These communications, with copies of all the notes that had passed between the two missions since the *John Adams* sailed, were, on October 26, given to Connell to bear to America. Connell left Ghent the same day for Ostend. Here, according to instructions, he detained the *Chauncey* until the British reply to the American note of the 24th could be delivered to him. The British note being presented on the 31st, Payne Todd, one of the secretaries of the legation, took the despatches to Ostend, and the *Chauncey* sailed the next day, November 1.<sup>42</sup>

The letter which the American ministers sent to Monroe declared that there was no hope that peace was likely to result from the negotiations. In spite of the fact that the sine qua non upon the Indian question had been reduced to a mere pacification of the Indians and an article embracing this point had been agreed upon, the American ministers considered the terms of the *uti possidetis* brought forward in the British note, October 21, as inadmissible and wholly incompatible with the previous declaration of the British ministers.<sup>43</sup>

<sup>42</sup> New York Spectator, Nov. 30, 1814.

<sup>43</sup> American Commissioners to Monroe, Oct. 25, 1814; American State Papers, For. Rel., III., 710-711; MS., Bureau of Indexes and Archives, "Treaty of Ghent."

The British note of October 31, by omitting the principle of *uti possidetis*, made the peace prospects somewhat brighter. Clay, with shrewd foresight, had predicted that the British would abandon the *uti possidetis* and hold fast to the islands of Passamaquoddy Bay and to the way from Halifax to Quebec, if successful on the Mobile or at New Orleans. Just as they had abandoned the Indian *sine qua non* piecemeal, so, he thought, they would abandon the territorial question.<sup>44</sup>

From October 30 to November 10 the American mission met each day to work out a projet of a treaty to be offered to the British. Every member of the mission took an active part in the discussions and in the formation of the various articles. Gallatin and Adams, as heretofore, performed the largest constructive work. Both of them prepared complete drafts for consideration by the commissioners. There was unanimity on scarcely one of the articles proposed, but those dealing with the fisheries and the navigation of the Mississippi were most hotly debated. Gallatin's draft of the projet suggested the renewal of the two privileges, one as a compensation for the other. Clay was bitterly opposed to allowing Great Britain the privilege of the navigation of the Mississippi. He contended that this was of far greater value than the

<sup>44</sup> Clay to Monroe, Oct. 26, 1814; Monroe Papers, MS., XIV., 1807.

fisheries. Adams was in favor either of adopting Gallatin's article or of taking "the ground that the whole right to the fisheries was recognized as a part of our national independence, that it could not be abrogated by the war, and needed no stipulation for its renewal." Gallatin's article was at first adopted, with a minority consisting of Clay and Russell dissenting. Clay's stubborn opposition and the declaration of his refusal to sign the treaty containing the article mentioned caused a reversal of the previous vote and the adoption of a substitute paragraph proposed by Clay himself, which left the fisheries out of the discussion.<sup>45</sup> Clay drafted the article upon impressment, which was adopted by the mission by a vote of three to two, Clay, Adams, and Russell favoring, Bayard and Gallatin opposing. The article upon indemnities was the work of Adams, and so also was the article offering to conclude a treaty of peace on the basis of the state existing before the war, applied to all the points in dispute between the two countries, leaving their adjustment to future negotiation. The article upon ratification was drawn jointly by Gallatin and Adams. The remainder of the projet was, in general, the work of Gallatin. The draft of the treaty, finally adopted and signed by all on November 10, was taken

<sup>45</sup> *Memoirs of J. Q. Adams, III.*, 60-64.

the same afternoon by Hughes to the hotel of the British ministers.<sup>46</sup>

The British Cabinet were in the meantime troubled at the way matters were progressing both at Ghent and at Vienna. The slowness of the negotiations at Vienna especially gave concern. Added to the difficulties of foreign diplomacy were those of a financial nature at home. British loans were at a discount. The property tax, which had been the main source of revenue to meet the extraordinary expenses of the Government, was to expire within a few months, and its reenactment was almost impossible, as the measure had been most unpopular.<sup>47</sup> The American war had cost far more than had been contemplated, and there appeared no favorable sign that the necessary expenditures in that direction would cease for some time. The cost for the next year was estimated at £10,000,000. The British debt had reached the largest figure in the history of the nation. The interest alone upon it amounted to £30,000,000 a year.

In view of these circumstances, and apprehending that the negotiations at Ghent might suddenly terminate, when the necessity of laying the papers before Parliament to call a vote upon them would arise,

<sup>46</sup> *Memoirs of J. Q. Adams*, III., 64-69.

<sup>47</sup> *Liverpool to Castlereagh*, Nov. 2, 1814; *Wellington's Supplementary Despatches*, IX., 401-402.

Liverpool had summoned a full meeting of the Cabinet to consider the American question.<sup>48</sup>

The Cabinet considered the situation so serious that they requested Wellington to take charge of the war in America. It had been thought that his prestige would restore confidence in the army, and bring about a condition more favorable to Great Britain with reference to peace. In case Great Britain should be obliged "to give up something of her just pretensions," it was said that this could be done more creditably through Wellington than through any one else.<sup>49</sup> An additional motive for sending Wellington to America was to remove him from Paris, where he had been British Ambassador since the overthrow of Napoleon's Government. His life was considered to be in danger there, and the Cabinet wished to remove him without umbrage to the French Government.<sup>50</sup>

In communicating to Wellington the desire of his Government, Liverpool presented to him two plans of leaving Paris without causing offense to the French Government. One was for him to proceed to Vienna to assist Castlereagh in the negotiations there, the other, to go to America to take charge of the war, "with full powers to make peace, or to continue the war,

<sup>48</sup> Liverpool to Castlereagh, Nov. 2, 1814; Wellington's Supplementary Despatches, IX., 401-402.

<sup>49</sup> Liverpool to Castlereagh, Nov. 4, 1814; Wellington's Supplementary Despatches, IX., 404-405.

<sup>50</sup> *Ibid.*

if peace should be found impracticable, with renewed vigor." Wellington was to act at his own pleasure in the matter. It was stated that the American war entailed much inconvenience, and the possibility of a speedy conclusion of it appeared most likely by uniting double power in Wellington.<sup>51</sup>

Lord Bathurst also wrote Wellington, urging him to make his decision between the two plans not as a soldier but as a statesman,—whether, as a statesman, “under the present circumstances, not as a statesman of Paris exclusively, but of Europe, it is better for the Duke of Wellington to go to Vienna, or to America.” Bathurst considered that it was important that Wellington should assume the “double character of negotiator and Commander-in-Chief” before the existing peace negotiations were broken off.<sup>52</sup>

Wellington believed that he was in no particular danger in Paris, and thought it would be unwise to send him to America, for if war should reopen in Europe he would be needed there. He expressed no objection to going to America, though he did not see great promise of British success. He thought there were sufficient troops there already. That which was wanting in America, he considered, was a naval superi-

<sup>51</sup> Liverpool to Wellington, Nov. 4, 1814; Wellington's Supplementary Despatches, IX., 405-407.

<sup>52</sup> Bathurst to Wellington, Nov. 4, 1814; Wellington's Supplementary Despatches, IX., 416-417.



ority on the lakes; and until such a superiority could be acquired it would be impossible to keep the enemy out of the whole frontier. He admitted that the confidence which he enjoyed as a result of the European struggle would reconcile the army and the people in England to terms of which they were unwilling then to approve. With regard to the negotiations, he stated that he thought they had no right from the existing state of the war to demand any cession of territory from America; that their possession of territory between the Penobscot and Passamaquoddy Bay must be regarded as merely temporary. The military operations, he said, though creditable, did not entitle the British to a cession of territory. He was therefore opposed to Great Britain's insisting upon the *uti possidetis*. If the British should secure New Orleans, which they hoped for, then it might be better to insist upon the cession of that province as a separate article, than upon the *uti possidetis* as a principle of negotiation. He considered that his withdrawal from France would be regarded either as a sign of defeat or as a sign that the two countries were not on the best of terms. He thought it extremely inadvisable to leave Paris just at that time. He was ready to go to America, he stated, and would go whenever ordered, but sending him at that juncture would publish to Europe that affairs there were in a serious state. This reply of

Wellington had the effect of causing the British Government to relinquish utterly their demand for territorial cession in America.<sup>53</sup>

In the note of November 10 the American ministers stated again that they did not consider the note of the British ministers of October 21, which merely referred to the points proposed in the first conference by offering to assume the basis of *uti possidetis*, already refused, as constituting a *projet* of a treaty as requested by them. They wrote that they had suggested, in the note of October 24, "that the exchange of the two *projets* should be made at the same time"; but that waiving the advantage of receiving the first draft, or any question of etiquette, they offered herewith a *projet* of a treaty to the British ministers.<sup>54</sup> They held the position that in view of the statement of the British ministers that they had no other propositions to offer than those contained in the note of October 21, there remained for consideration only three subjects, which had been presented by the British ministers. These were the fisheries, the northwest boundary, and the question of adoption of the basis of *uti possidetis* with respect to the other boundaries. In regard to the fisheries it was stated that they were "not authorized

<sup>53</sup> Wellington to Liverpool, Nov. 9, 1814; Wellington's Supplementary Despatches, IX., 424-426, 435-437.

<sup>54</sup> American to British Ministers, Nov. 10, 1814; American State Papers, For. Rel., III., 733-734; MS., Bureau of Indexes and Archives, "Treaty of Ghent."

to bring into discussion any of the rights or liberties which the United States have heretofore enjoyed in relation thereto." It was held that the treaty of 1783 from its peculiar character was not abrogated by the war, and no stipulation was necessary to entitle the United States to the full enjoyment of all the rights under that treaty.<sup>55</sup>

The American note refused to assent to the British proposal to fix the northwest boundary by the line from the Lake of the Woods to the Mississippi unless the boundaries of Louisiana should also be provided for in the settlement. An article on that subject similar to the one agreed to between the British and American commissioners in 1807 was submitted. With reference to the other boundaries between the British and American territories it was proposed to refer the whole subject to commissioners; and for this purpose five articles were drawn on the same principle as was adopted by the two Powers in the Jay treaty for settling the disputed question of the river St. Croix.<sup>56</sup>

The basis of *uti possidetis* was again rejected, and the principle of the *status quo ante bellum* was offered, which would place the two countries, "in respect to all

<sup>55</sup> American to British Ministers, Nov. 10, 1814; MS., Bureau of Indexes and Archives, "Treaty of Ghent"; American State Papers, For. Rel., III., 733-734.

<sup>56</sup> *Ibid.*

the subjects of difference between them, in the same state they were in at the commencement of the present war; reserving to each party all its rights, and leaving whatever may remain of controversy between them for future and pacific negotiation." An article upon this basis with reference to restoration of territory was presented in the projet.<sup>57</sup>

The projet included an article on Indian pacification which had already been agreed upon. Another article was offered intended "to restrain the hostilities, and to prevent the employment of the savages in war," and one "reciprocally granting a general amnesty." The article with reference to impressment, which Clay had drafted, prohibited the practice for a given term of years, both states mutually agreeing to exclude from its marine service all persons belonging to the other state. A formal agreement upon what should constitute a legal blockade was made the substance of one article. The statement on this subject was that which had been given by Monroe in the instructions of April 15, 1813. An article was presented relating to indemnities. This consisted of two parts; one part providing for irregular seizures, captures, and condemnations of American property, contrary to the established laws and usages of nations, previous to the com-

<sup>57</sup> American to British Ministers, Nov. 10, 1814; MS., Bureau of Indexes and Archives, "Treaty of Ghent"; American State Papers, For. Rel., III., 733-734.

mencement of the war; and the other, for similar irregularities committed during the war and contrary to the known and established usages of war between civilized nations. The note asserted that the first part applied to the United States alone, which was justly entitled to indemnification for losses experienced in consequence of the effect of the orders in council of November, 1807, and April, 1809; the second part applied equally to both belligerent parties. The projet also included an article fixing a varying time limit when captures of vessels at sea should cease.<sup>58</sup> In presenting their projet the American ministers requested the British ministers, in their turn, to make explicit answer respecting all the articles included in it; and to present a projet reduced to specific propositions embracing all the objects that they intended to bring forward.<sup>59</sup>

The next day after receiving the American note and projet the British ministers, as usual, referred the papers to their Government, and asked for instructions upon certain points in the projet concerning which they were in ignorance as to the views and sentiments

<sup>58</sup> Projet of Treaty; MS., Bureau of Indexes and Archives, "Treaty of Ghent"; American State Papers, For. Rel., III., 735-740.

<sup>59</sup> American to British Ministers, Nov. 10, 1814; MS., Bureau of Indexes and Archives, "Treaty of Ghent"; American State Papers, For. Rel., III., 733-734.

of the British Ministry.<sup>60</sup> The part upon which they particularly wished information was that relating to the boundary of Louisiana. They were unwilling to consent to a discussion of this boundary, for their doing so might be taken as a recognition of the right of the United States to the occupation of the territory. The British ministers stated that "to accede to it, with the reservation proposed as to the country beyond the Stony Mountains, would be to abandon to their encroachment the northwest coast of America, on which they had already made some settlements."<sup>61</sup> The British commissioners considered the projet so extravagant that it should be wholly rejected; but being in doubt whether or not they should reply to each article, giving the reasons for the specific objections, they requested to be instructed by their Government.<sup>62</sup> They also wished instructions as to whether they should present a projet of a treaty in accordance with the request of the American ministers. They sent with their letter a draft of the points which they considered such a projet should contain, if one were to be presented.

The British ministers became convinced that the Americans were determined to agree to no terms of

<sup>60</sup> British Commissioners to Castlereagh, Nov. 11, 1814; MS., British Foreign Office, 5, 102.

<sup>61</sup> *Ibid.*

<sup>62</sup> Goulburn to Bathurst, Nov. 10, 1814; Wellington's Supplementary Despatches, IX., 427.

peace except on the principle of status quo ante bellum. They wrote to their Government that to secure peace it would be necessary to accede to the American proposition, "placing things upon the same footing in the point of privileges as well as rights, as they stood when war was declared." They believed that insistence either upon the retention of territory or upon the fisheries would cause the negotiations to be broken off. The question in their minds was upon which of the two it would be more advantageous to break. They believed that the fisheries would be the more favorable point of dispute, for it was of great interest to British subjects, while only a small part of the American people were interested in it. The British ministers thought that the articles respecting the appointment of commissioners to settle the boundary disputes should be rejected in toto. The objection, it was stated, should not be made "on the real ground, which is, that Americans always cheat us"; but on the ground that "the plenipotentiaries on both sides are more competent to decide such points." They would reject the article relative to islands in the Passamaquoddy Bay on the ground that it was inadmissible because it raised a doubt as to the title of Great Britain to those islands. The article with reference to indemnities as far as it affected indemnifications for losses previous to the war was also regarded as inadmissible.<sup>63</sup>

<sup>63</sup> Goulburn to Bathurst, Nov. 14, 1814; Wellington's Supplementary Despatches, IX., 432-433.

The British Cabinet considered the American project for some time before giving instructions to their ministers as to the nature of their reply. They finally decided to withdraw the principle of *uti possidetis* which had been advanced in the note of October 21. They were led to this decision, as has been indicated before, by the unsatisfactory condition of the negotiations at Vienna, and by reason of the financial difficulties in Great Britain.<sup>64</sup> The property tax upon which the main reliance had been placed for raising revenue to meet the extraordinary expense of the Government was extremely unpopular, and it would be quite impossible to secure consent to its continuance after the expiration of the present law.

Further, in view of the general depression of rents, which appeared inevitable, it seemed to the British Cabinet desirable to bring the war in America to a close.<sup>65</sup> The debate in Parliament had shown that to continue the war on the question of territorial claims only would meet with bitter opposition. The Duke of Wellington, too, had influenced the Cabinet very greatly by his assertion that no material military advantage could be expected as the war went on, and that he would be reluctant to accept the command unless a

<sup>64</sup> Liverpool to Castlereagh, Nov. 18, 1814; Wellington's Supplementary Despatches, IX., 438-439.

<sup>65</sup> *Ibid.*



serious effort to obtain peace should be made without insisting upon keeping any part of the conquest.<sup>66</sup>

One of the strongest influences in bringing about a change in the demands of the British Cabinet was the constant fear of a renewal of the war in Europe. There was a strong presentiment of the occurrence of the event which took place the following March. With this fear in mind, Wellington had been stationed as ambassador at Paris. In the event of the renewal of the war in Europe, Great Britain needed all her military strength. Again, in the Congress of Vienna, Castlereagh had been forced to be less aggressive in British demands owing to the existence of the war with America. Later, the British press gave reports from Vienna in which it was stated that the conclusion of peace between Great Britain and the United States had produced a more vigorous tone in the notes of Lord Castlereagh.<sup>67</sup>

While the Cabinet were considering the reply that should be made to the American note and projet, the news reached Great Britain of the publication in the United States of the first part of the negotiations. The American Government was severely criticized for publishing diplomatic papers before the negotiations were completed. November 19, both Houses of Par-

<sup>66</sup> Liverpool to Castlereagh, Nov. 18, 1814; Wellington's Supplementary Despatches, IX., 438-439.

<sup>67</sup> London Morning Post, Jan. 23, 1815 (quoted in Ingersoll's Historical Sketch of the Second War, p. 313).

liament took up the discussion of the correspondence that had passed between the representatives of the two states, with the result that the Cabinet was severely censured for instructing the British commissioners to make such excessive demands. Alexander Baring, a friend of peace and of America, said in the House of Commons that he thought no man in the country could have expected that America would ever have yielded to such pretensions at a time when Great Britain had gained no advantage over her in the war. On November 21, in the House of Lords, the Marquis of Lansdowne, after inquiring of Earl Liverpool whether the Ghent correspondence as published in America was authentic, and receiving an affirmative answer, declared that the pretensions set up by Great Britain called loudly for the interference of Parliament. He said that he was willing to support the dictum of perpetual British allegiance and impressment, but not a war for conquest or territory, for the lakes or the Indians.<sup>68</sup>

All of these influences combined forced the Cabinet to lower the demands, and the British commissioners accordingly were instructed in this view. Despatches bearing dates of November 21 and 22 were sent from the Foreign Office to the British ministers communicating the change in the Ministry's demands. These were received at Ghent November 25. The British commissioners discussed the points to be made in their

<sup>68</sup> Ingersoll's *Historical Sketch of the Second War*, 300.

reply to the Americans. Goulburn believed that if, after receiving a declaration of what the American ministers maintained as their right to the fisheries, no answer were made upon that point, it would be practically an admission of the United States to the fisheries as enjoyed by them before the war, and that they could not be excluded from them. Doctor Adams and Lord Gambier held a contrary view. All three were opposed to the admission of any article that would favor America's fisheries.<sup>69</sup> The British commissioners made a few changes in the wording of the projet in addition to the points noted for change by the Department of Foreign Affairs,<sup>70</sup> but only in the article upon amnesty was there any important alteration.

In the note accompanying the amended projet returned by the British commissioners comment was made upon several of the articles, and numerous verbal changes were suggested. The article relating to the Indians, which provided that both Powers should pledge themselves not to employ the Indians in any subsequent war, was declared inadmissible on the ground that it was impossible for the British ministers to bind their Government in regard to its conduct in any future war. The articles which the American

<sup>69</sup> Goulburn to Bathurst, Nov. 25, 1814; Wellington's Supplementary Despatches, IX., 452-454.

<sup>70</sup> Letter from the British Foreign Office to British Commissioners, Nov. 21, is missing from the despatches in the Public Record Office.

commissioners had proposed with respect to impressment and blockade, the British commissioners maintained, were unnecessary, since the British Government were willing to conclude the treaty without any stipulation upon the subjects included in those articles, and the American ministers had stated that the conclusion of the peace would not depend upon those points. The British commissioners objected to the article upon indemnities, stating that the indemnifications proposed were unprecedented and were so objectionable that if insisted upon, all hope of bringing the negotiations to a favorable issue must prove in vain. The declaration was made that, as the British Government made no claim for losses sustained by British subjects in consequence of the war, neither could they consent to make compensation for losses sustained by the citizens of the United States in the war.<sup>71</sup>

The British note suggested that a stipulation be made by which the courts of justice in each state should be open to all the claimants of the other state, and that "no obstruction be thrown in the way of their recovery of the rights, claims, or debts of any kind, respectively due or belonging to them." The article with reference to amnesty was declared to be wholly unnecessary. The British ministers stated with refer-

<sup>71</sup> British to American Ministers, Nov. 26, 1814; MS., Bureau of Indexes and Archives, "Treaty of Ghent"; American State Papers, For. Rel., III., 740-741.

ence to particular alterations in the various articles, that they were prepared to make such explanations as might be required with a view to reconciling the pretensions of the two Governments. In the concluding paragraph of the British note the former demand of the principle of *uti possidetis* was reluctantly withdrawn in these words: "The undersigned have foreborne to insist upon the basis of *uti possidetis*, to the advantage of which they consider their country fully entitled. But should this negotiation terminate in a way contrary to their hopes and just expectations, they must protest against any claim or demand being urged by the American Government in any future negotiation, in consequence of the facilities which His Majesty's Government have now shown themselves willing to afford to the speedy restoration of peace."<sup>72</sup>

The amended projet returned by the British commissioners provided that the notification for the cessation of the war be issued after ratifications of the treaty should have been exchanged rather than at the time of the signature. This was designed, it was supposed, to give time for the completion of the British plans against New Orleans, the successful outcome of which was never doubted. The date from which a limitation would be placed upon the capture of prize

<sup>72</sup> British to American Ministers, Nov. 26, 1814; MS., Bureau of Indexes and Archives, "Treaty of Ghent"; American State Papers, For. Rel., III., 740-741.

vessels was changed from the signing of the treaty to the exchange of ratifications. In the article providing for boundary commissioners the British substituted two for three commissioners, and provided that, in case of a failure of the two commissioners to agree, reference should be made to a friendly Power whose decision should be accepted as final. It was expected that two partisan commissioners would not agree upon all, if any, of the points in dispute, and that in consequence the settlement of the questions would be submitted to the arbitration of a European Power with whom the influence of Great Britain would naturally be greater than that of the United States.

The article concerning the northwest boundary was changed from the wording, "a line drawn due north or south (as the case may be) from the most northwestern point of the Lake of the Woods, until it shall intersect the forty-ninth parallel of north latitude, and from the point of such intersection due west along and with the said parallel, shall be the dividing line between His Majesty's territories and those of the United States to the westward of the said lake, so far as the said respective territories extend in that quarter," to the following: "a line drawn due west from the Lake of the Woods, along the forty-ninth parallel of north latitude, shall be the line of demarcation between His Britannic Majesty's territories and those of the United States to the westward of the said lake, so far as the

territories of the United States extend in that quarter." The British added to this article a guarantee to British subjects of the privilege of the navigation of the Mississippi River.<sup>73</sup>

An additional article relating to the prisoners of war was proposed by the British commissioners. Instead of a mere statement that "all prisoners on both sides shall be set at liberty," the British offered the following: "All prisoners of war, taken on either side as well by land as by sea, shall be restored as soon as practicable after the ratifications of this treaty shall have been exchanged, on their paying the debts which they have contracted during their captivity. The two contracting parties respectively engage to discharge in specie the advances which may have been made by the other for the sustenance and maintenance of such prisoners."<sup>74</sup>

By abandoning the principle of *uti possidetis*, as well as the Indian boundary and the exclusive military control of the lakes, the British Government cleared away what had proved to be the chief obstacles in the way of peace.

<sup>73</sup> Copy of projet of treaty of peace; American State Papers, For. Rel., III., 735-740.

<sup>74</sup> Ibid.

## CHAPTER VIII

### CONCLUSION OF THE PEACE NEGOTIATION

The British note presenting the amended projet of the treaty and giving up the principle of *uti possidetis* was received November 27. For three days thereafter the American ministers were engaged in discussing the alterations made in the projet and formulating their reply. The principal discussion was over the article with regard to the northwest boundary, particularly that part added by the British note granting to Great Britain the navigation of the Mississippi. This provision was vehemently opposed by Clay, the champion of the West. Gallatin, out of regard for the feeling in New England, was in favor of granting the navigation of the Mississippi in exchange for the fishing privilege. Clay with much fervor argued against this plan, asserting that the fishing privileges were of much less value than the navigation of the Mississippi; Adams, on the other hand, considered that the privilege of navigating the Mississippi was of small importance.<sup>1</sup> Clay maintained that to require a stipulation on the fisheries was inconsistent with the claim already advanced that the rights respecting these

<sup>1</sup> Memoirs of J. Q. Adams, III., 71.



were guaranteed by the treaty of 1783 and needed no renewal. Bayard held that there was a distinction between the American rights to the fisheries secured by the treaty of peace of 1783 and those which Great Britain possessed in the privilege granted to her of navigating the Mississippi; Gallatin proposed to offer an article making the navigation of the Mississippi an equivalent for the fisheries.<sup>2</sup> This proposal was agreed to by a vote of 3 to 2, Clay and Russell voting against the proposition.

In the preparation of the note to be presented to the British ministers Gallatin, Adams, and Clay drew up drafts of the proposed note, and these were read before the mission. The draft as finally adopted was more largely the work of Gallatin than of any other member of the mission. It was Gallatin's suggestion that they should waive the claims of indemnities for losses subsequent to the war incurred by vessels in British ports which were not given the customary six months' notice; that these claims should instead be taken up for discussion with the British ministers. Adams proposed sending a copy of the deposition respecting the carrying away and sale of negroes by British officers. To this all the others objected. The American note was adopted and signed on the 30th. It was immediately taken by Hughes to the British ministers.<sup>3</sup>

<sup>2</sup> Memoirs of J. Q. Adams, III., 71-75.

<sup>3</sup> Ibid., 76-78.

This note consented to the substitution of the day of exchange of ratifications for that of the signature of the treaty as the time for the cessation of hostilities and for regulating the periods when prizes at sea should be restored, "it being understood," the note stated, "that measures shall be adopted for a speedy exchange of ratifications, and that the periods in the second article shall be fixed in a manner corresponding with this alteration."<sup>4</sup>

The new article respecting prisoners, and the change in the composition and procedure of the boundary commissions, which had been proposed by the British commissioners, were accepted. An additional suggestion was made that a time limit be fixed within which the commissioners must make their decision and report. The note consented to drop entirely the articles relating to the non-employment of Indians in any future hostilities; the definition of blockade and general amnesty; and also that part of the article concerning indemnities for losses and damages received after the commencement of the war. The American commissioners expressed their desire to "discuss the cases of vessels and property in port when war was declared or known"; and in that connection submitted "a copy of the provision made in that respect by the

<sup>4</sup> American to British Ministers, Nov. 30, 1814; MS., Bureau of Indexes and Archives, "Treaty of Ghent"; American State Papers, For. Rel., III., 741.

United States." They consented to the withdrawal of the article upon impressment with the understanding that the rights of both Powers on the subject of seamen, and the claims of the citizens and subjects of the two contracting parties to indemnities for losses and damages sustained prior to the commencement of the war, shall not be affected or impaired by the omission in the treaty of any specific provision with respect to those two subjects."<sup>5</sup>

To most of the verbal alterations made by the British in the articles the American commissioners assented, but from some they dissented. These and other changes they expressed their desire to discuss; and to this end they requested a conference, at such time and place as might be convenient for the British plenipotentiaries, in order to consider these points, and to agree upon the "places and time left in blank in several of the articles."<sup>6</sup>

The British ministers replied to this note the same day, and named the Chartreux, their hotel, for the meeting place the next day at twelve o'clock.<sup>7</sup> This was the first meeting of the two missions since August. All the negotiations since that time had been carried on by the interchange of notes. In this conference

<sup>5</sup> American to British Commissioners, Nov. 30, 1814; American State Papers, For. Rel., III., 741.

<sup>6</sup> Ibid.

<sup>7</sup> British to American Ministers, Nov. 30, 1814; American State Papers, For. Rel., III., 742.

the chairman of each mission opened his respective side; Gambier for the British, and Adams for the American.<sup>8</sup>

The American ministers objected to the changes in the first article, where the words "belonging to either party" and "taken by the other" were substituted for "taken by either party from the other." They objected to the insertion because it would make the restoration of territory to depend not upon right, but upon possession at the commencement of the war.<sup>9</sup> They maintained that the "retention of possessions obtained by force was so far setting up a title for conquest"; that possession was *prima facie* evidence of right; that if either party had a right, or both parties had an equal right, the possessor could not be ousted by the other claimant. The British ministers maintained that temporary possession until the right could be ascertained was of little consequence, and proposed that "both parties should retain possession of any territory the right to which was in dispute."<sup>10</sup> The Americans objected on the ground that it would place it in the power of the party in possession of any territory to claim that such territory was in dispute. They insisted that the words which they had originally pro-

<sup>8</sup> *Memoirs of J. Q. Adams, III.*, 79.

<sup>9</sup> *Ibid.*, 80.

<sup>10</sup> *Official Statement of Conference by Secretary Hughes*, Dec. 1, 1814; *Russell Journals*, V., 524-526.

posed, which stipulated for the restitution of all possessions, should be adopted,<sup>11</sup> and that any other arrangement would be inconsistent with the principle of status quo ante bellum, upon which alone they had stated they were authorized to treat. The British plenipotentiaries refused to strike out the alteration, but agreed to refer the question to their Government.<sup>12</sup>

The significance of this discussion was that the British Government were determined to retain the possession of certain islands in the Bay of Passamaquoddy which had been taken by the British during the war. The British claimed that these, though in the possession of the United States at the commencement of the war, originally belonged to Nova Scotia and, therefore, should rightfully be retained by Great Britain. The Americans on the contrary maintained that these islands belonged to the United States, being a part of the State of Massachusetts; and they claimed that the territory should be given up on the principle of mutual restitution, as was done in other similar cases.

The American commissioners proposed for time to be allowed for cessation of hostile operations after the ratifications of the treaty had been exchanged, "fifteen days in the Channel, in the North seas, in all parts of

<sup>11</sup> British Commissioners to Castlereagh, Dec. 1, 1814; MS., British Foreign Office 5, 102.

<sup>12</sup> Official Statement of Conference by Secretary Hughes, Dec. 1, 1814; Russell Journals, V., 524-526; American State Papers, For. Rel., III., 742.

the Atlantic Ocean to the equinoctial line or the equator, and in all parts of the Mediterranean. Two months in the Atlantic ocean to the latitude of the Cape of Good Hope, and three months in all other parts of the world." The British ministers proposed four different territorial areas within which the time allowed was to be twelve, thirty, forty, and one hundred and fifty days respectively. The American plenipotentiaries reserved the British proposal for consideration.<sup>13</sup>

The American ministers proposed the following change in the wording of the article redrafted by the British, relating to the settlement of the disputed ownership of the islands in the Bay of Fundy: In place of the words, "whereas claims have been made by the Government of the United States to certain islands in the bay of Fundy," substitute the words, "whereas the several islands in the bay of Passamaquoddy, which is a part of the bay of Fundy, and the island of Grand Menan in the said bay of Fundy, are claimed by the United States as being comprehended within their aforesaid boundaries."<sup>14</sup> The American ministers believed that the wording of the article as stated by the

<sup>13</sup> Official Statement of Conference by Secretary Hughes Dec. 1, 1814; Russell Journals, V., 524-526; American State Papers, For. Rel., III., 742.

<sup>14</sup> *Ibid.*

British had been intended to exclude Moose Island in Passamaquoddy Bay from coming within the disputed boundary. This change and the article in which it belonged were agreed upon.<sup>15</sup>

The change proposed by the American ministers in the articles upon boundaries, limiting the time within which the commissioners were required to act, was objected to by the British. The blanks in the boundary articles for the insertion of the place where the respective commissioners should meet were filled in at this conference. St. Andrews, in the Province of New Brunswick, was agreed upon for the commissions appointed for the settlement of the question of disputed islands in the Bay of Fundy and the northeastern boundary. Albany was to be the meeting place of the commission for the settlement of the northern boundary.<sup>16</sup> The article containing the provision with respect to British navigation of the Mississippi caused the sharpest discussion. With regard to this subject the American ministers maintained that Great Britain had made a new demand without offering an equivalent; that, if the demand was based on the treaty of 1783, the fishing liberty ought in like manner to be revised; if the demand did not rest upon that treaty, then, no equivalent being offered for the privilege, it

<sup>15</sup> *Memoirs of J. Q. Adams, III.*, 84.

<sup>16</sup> *Ibid.*

was "without reciprocity."<sup>17</sup> Gambier, for the British, held that the arrangement regarding the north-west boundary, contained in the first part of the article, to which the British ministers had given their consent, furnished an equivalent.<sup>18</sup> The Americans refused to concur in that opinion and proposed, as an alternative, to expunge the whole article.<sup>19</sup> The British ministers stated that they would refer it to their Government. As another alternative the American ministers proposed that British subjects might have access to the Mississippi River at a single appointed place upon payment of regular custom dues.<sup>20</sup>

In connection with the question of the navigation of the Mississippi, the American ministers again argued the claim of the United States to the fisheries. They maintained that the treaty of 1783 differed from ordinary treaties in that it did not confer, but only recognized, advantages enjoyed under both by Great Britain and the United States and, therefore, no stipulation was necessary to secure the full enjoyment of the fisheries to the United States as stipulated in the treaty of 1783. If, however, any stipulation were to be made, they said that they would propose one which would

<sup>17</sup> Official Statement of the Conference by Secretary Hughes, Dec. 1, 1814; Russell Journals, V., 524-526.

<sup>18</sup> British Commissioners to Castlereagh, Dec. 1, 1814; MS., British Foreign Office, 5, 102.

<sup>19</sup> *Ibid.*

<sup>20</sup> Protocol of Conference by Secretary Hughes, Dec. 1, 1814; American State Papers, For. Rel., III., 742.



make the two privileges offset each other. A memorandum, containing an article to this effect, was left with the British by the American ministers at the close of this discussion. This article was as follows: "The inhabitants of the United States shall continue to enjoy the liberty to take, dry, and cure fish in places within the exclusive jurisdiction of Great Britain, as secured by the former treaty of peace; and the navigation of the river Mississippi within the exclusive jurisdiction of the United States shall remain free and open to the subjects of Great Britain, in the manner secured by the said treaty."<sup>21</sup> This article, also, was refused by the British plenipotentiaries.

There was an ardent discussion over the article with regard to indemnity for vessels and effects seized in British ports when the war was first declared or known. The American ministers demanded the restitution of the value of such seizures. They enforced their demand on the ground of the "law of nations" to abstain from the capture of private property at the breaking out of a war. This general law, they contended, was shown by the frequent clauses in treaties stipulating for a timely notice of hostilities.<sup>22</sup>

<sup>21</sup> Official Statement of Conference by Secretary Hughes, Dec. 1, 1814; Russell Journals, V., 524-526. Protocol of Conference of Dec. 1, 1814; American State Papers, For. Rel., III., 742.

<sup>22</sup> British Commissioners to Castlereagh, Dec. 1, 1814; MS., British Foreign Office, 5, 102.

This claim was further pressed inasmuch as the United States at the time of the declaration of war had given sixty days' notice for British vessels to leave American ports. The British commissioners maintained that it was the practice of civilized nations to capture and condemn all private property taken afloat, or the proceeds of it, whenever a state of war actually existed, without any reference to the time when it began. They maintained that periods fixed in order to apprise persons of hostilities were matters of convenience only, and did not affirm any general law or usage on the subject. Further, that the principle of demand, more than the value of the property, was of importance: "that restitution of value could not take place without the implication that such ships and goods had been improperly or irregularly seized; . . . that it was wholly unprecedented for any nation that had declared war against Great Britain even to ask and much less to receive indemnity, for the direct and necessary consequences of their own act."<sup>23</sup> They asserted that the United States, being the party which declared the war, had no right to indulgence on this point, and that the act of Congress, which had been communicated to them, merely authorized the President to grant passports, but did not make it obligatory for him to do so. The British commissioners informed the Americans

<sup>23</sup> British Commissioners to Castlereagh, Dec. 1, 1814; MS., British Foreign Office, 5, 102.

that their Government would reject such demands and that it would be useless to submit them.<sup>24</sup>

On the day of the conference, the British commissioners transmitted a copy of the American note of November 30 to their Government. In a note to Castlereagh they expressed satisfaction that the American ministers had agreed to abandon all the articles that had been declared to be inadmissible, with one modification. They mentioned the two objections on which alone the American ministers "evinced a disposition to insist." With reference to the first objection, which was to the alteration made by the British ministers in the first article of the projet, that one aimed at "limiting the restitution of territory to the possessions belonging to either party which had been taken by the other during the war," the British ministers stated that they saw the design of the American ministers "to obtain occupation of the islands in Passamaquoddy Bay during the time between the ratification of the treaty and the decisions upon the claims of the United States, together with the fair advantage which might result from the fact of possession."<sup>25</sup> The British commissioners reported the second main objection of the American ministers, that of the free

<sup>24</sup> Official Statement of Conference by Secretary Hughes, Dec. 1, 1814; Russell Journals, V., 524-526.

<sup>25</sup> British Commissioners to Castlereagh, Dec. 1, 1814; MS., British Foreign Office, 5, 102

navigation of the Mississippi by British subjects, together with the arguments which the American ministers had used in connection with that matter, and also the American claim to the fisheries.

The British ministers considered that, in drawing from the American ministers an offer of an equivalent for the fisheries, they had secured an advantage, since this was a departure from the American argument that the fishing privileges were not abrogated by the war.<sup>26</sup> In their note of December 1 they asked for specific instructions from their Government upon the following points:—

First. As to their adherence to the words of the first article, "belonging to either party and taken by the other."

Second. As to the retention of any part of article eight, which dealt with the northwestern boundary.

Third. As to insisting upon the latter part of that article relative to the Mississippi.

Fourth. As to accepting the navigation of the Mississippi with the very limited access offered in the American proposal as an equivalent for the privileges of the fisheries.<sup>27</sup>

With reference to the first of these points the British thought that the American ministers would yield. They

<sup>26</sup> British Commissioners to Castlereagh, Dec. 1, 1814; MS., British Foreign Office, 5, 102.

<sup>27</sup> *Ibid.*

themselves were inclined to give up the free navigation of the Mississippi, since they considered they had secured a tacit admission from the American ministers that the navigation and fishing privileges rested on the footing of a stipulation in the treaty of 1783. Therefore, they reasoned, giving up this privilege would place them in a position to exclude the United States from the fishing privileges.<sup>28</sup> They urged that as little delay as possible should be allowed in the reply, as it was important that the negotiations should be completed speedily, for the United States Senate would adjourn March 2, and the concurrence of this body was necessary to the ratification of the treaty.<sup>29</sup>

On the second of December the British Government sent a despatch to the peace ministers instructing them to demand of the American ministers the proofs that the British naval officers had taken slaves from the coast of America and sold them in the West Indies.<sup>30</sup> The British ministers, accordingly, made this demand. They stated in their note that they were instructed to assure the American plenipotentiaries that, upon receiving the proofs in question, the British Government would adopt every means in their power to bring to

<sup>28</sup> Goulburn to Bathurst, Dec. 1, 1814; Wellington's Supplementary Despatches, IX., 460-461.

<sup>29</sup> *Ibid.*

<sup>30</sup> Bathurst to Commissioners at Ghent, Dec. 2, 1814; *Memoirs and Correspondence of Castlereagh*, X., 213; MS., British Foreign Office, 5, 101.

justice any British subjects guilty of the offense charged against them by the Secretary of State.<sup>31</sup> The American ministers, conscious that the proofs which they had were meager, and unwilling to provoke irritation, deferred their answer to the British note.

In view of the favorable prospects for peace, the American commissioners thought that every precaution ought to be taken to prevent discord in the future negotiations. To this end, the mission, at Russell's suggestion, decided to divulge nothing of the discussions which took place either at their own meetings or at the conference of the two missions, and agreed that the papers should be communicated to no one except the Secretary, Christopher Hughes, Jr.<sup>32</sup> It was in consequence of this policy that William Shaler, who was attached to the mission, became offended and left Ghent.<sup>33</sup> He proceeded to Paris, carrying with him despatches from the Department of State for Minister Crawford. He was also the bearer of a letter from the mission to Crawford containing the information that, in view of the present state of the negotiations, the American ministers wished to revoke their former opinion with respect to the employment of French

<sup>31</sup> British to American Commissioners, Dec. 7, 1814; MS., Bureau of Indexes and Archives, "Treaty of Ghent."

<sup>32</sup> Memoirs of J. Q. Adams, III., 90.

<sup>33</sup> *Ibid.*, 91.

aid.<sup>34</sup> Crawford previously had suggested to them the advisability of employing French officers and soldiers, who, he wrote, could easily be obtained.<sup>35</sup> The American ministers had in an earlier letter given an opinion favorable to such a plan.<sup>36</sup>

On the 6th of December the British Government sent the requested instructions to their commissioners. Upon the two special points of dispute the British ministers were instructed to insist on the retention of the words "belonging to either party and taken by the other" in the first article and to impress upon the American commissioners that the alteration in no way was inconsistent with the principle of status quo ante bellum upon which they had agreed to treat, as there was a "manifest difference between the restitution of territory which unquestionably belonged to either party, previous to the war, and the restitution of that of which either party may have had temporary possession immediately preceding the war."<sup>37</sup> In order to avoid the inconveniences that might arise in the restoration of territory situated in different places, which the

<sup>34</sup> American Commissioners to Crawford, Dec. 2, 1814; MS., Bureau of Indexes and Archives, "Treaty of Ghent."

<sup>35</sup> Crawford to American Commissioners, Oct. 14, 1814; Russell Journals, V., 483-485.

<sup>36</sup> American Commissioners to Crawford, Oct. 19, 1814; Russell Journals, V., 483-486.

<sup>37</sup> Bathurst to Commissioners at Ghent, Dec. 6, 1814; Memoirs and Correspondence of Castlereagh, X., 214-217; MS., British Foreign Office, 5, 101.

party in possession might claim the right to retain, the British ministers were authorized to consent to limit "the application of the Article to such possessions only as are by the tenour of the Treaty itself, liable to dispute;" more especially, to limit its application to such possessions as were to be decided upon by the commissioners on the disputed boundaries. Every facility in wording the limitations was to be allowed, if only "the object for which the alteration was proposed be obtained," namely, the retention of the islands in Passamaquoddy Bay during the time of reference to the commissioners.<sup>38</sup>

The Cabinet approved of the conduct of their commissioners in admitting that the free access to the navigation of the Mississippi was no longer a right belonging to Great Britain under the treaty of 1783, but was to be considered as granted by the American Government in return for the favorable arrangement of the northwestern boundary to which Great Britain had given consent. The British commissioners were to object to the proposal to make the fishing privileges and the navigation of the Mississippi offset each other. It was stated that, if they were to be considered equivalent, the manner in which they had been proposed by the American ministers was very unequal; for the American commissioners had proposed a "limited and

<sup>38</sup> Bathurst to Commissioners at Ghent, Dec. 6, 1814; *Memoirs and Correspondence of Castlereagh*, X., 214-217; MS., British Foreign Office, 5, 101.



restricted renewal" of the one privilege, in return for an "unlimited and unrestricted renewal" of the other.<sup>39</sup>

With the instructions were enclosed two articles for the commissioners to propose. By the first, the north-western boundary was defined as had already been agreed upon; by the second, the conditions on which Great Britain would renew the fishing liberty heretofore enjoyed by the United States and the privilege enjoyed by Great Britain with reference to the navigation of the Mississippi were to be left to future negotiation.<sup>40</sup> The commissioners were authorized not to sign the treaty with the omission of the amended projet of article eight with reference to the relinquishment of the fishing privileges; nor with the omission of the latter part of the article concerning the navigation of the Mississippi. Instructions were further given them that, in case they were unable to secure the accession of the American ministers to the proposition as offered by the British Government or to some other written document which should acknowledge that the fishing liberty was no longer in force, they should refer home for further instructions.<sup>41</sup>

<sup>39</sup> Bathurst to Commissioners at Ghent, Dec. 6, 1814; *Memoirs and Correspondence of Castlereagh*, X., 214-217; MS., British Foreign Office, 5, 101.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

The British ministers upon receiving these instructions from their Government sent their secretary to the American mission requesting a conference at such time and place as might be convenient for the American ministers. The American commissioners named the next day, December 10, as the time and their own rooms as the place for the meeting.<sup>42</sup>

At the conference on the 10th, after the protocol of the conference of the first of December had been agreed upon, the British ministers stated that they were instructed not to consent to allow the words in the first article, "belonging to either party and taken by the other" to be changed unless some modification should be made, either by excepting from mutual restitution all those territories which were made by any article of the treaty the subject of reference to commissioners, or by excepting alone the islands in Passamaquoddy Bay.<sup>43</sup> This was suggested to remove the objection made by the American commissioners that under the former British proposal each party would be given the right to judge in the first instance of what did, or did not, belong to the other. The American commissioners took this statement under consideration.<sup>44</sup> The

<sup>42</sup> Memoirs of J. Q. Adams, III, 93.

<sup>43</sup> Protocol of conference of Dec. 10, 1814; MS., Bureau of Indexes and Archives, "Treaty of Ghent"; American State Papers, For. Rel., III., 743.

<sup>44</sup> *Ibid.*

British commissioners said with reference to article eight that their Government offered in lieu of the American proposals to retain the amended article as to the boundary from the Lake of the Woods to the Stony Mountains, and to insert the following stipulation: "His Britannic Majesty agrees to enter into negotiation with the United States of America, respecting the terms, conditions, and regulations under which the inhabitants of the said United States shall have the liberty of taking fish on certain parts of the coast of Newfoundland, and other of His Britannic Majesty's dominions in North America, and of drying and curing fish, in the unsettled bays, harbors, and creeks of Nova Scotia, Magdalen islands, and Labrador; as stipulated in the latter part of the third article of the treaty of 1783, in consideration of a fair equivalent to be agreed upon between His Majesty and the said United States, and granted by the said United States, for such liberty as aforesaid.

"The United States of America agree to enter into negotiation with His Britannic Majesty respecting the terms, conditions, and regulations under which the navigation of the river Mississippi from its source to the ocean, as stipulated in the eighth article of the treaty of 1783, shall remain free and open to the subjects of Great Britain, in consideration of a fair equivalent, to be agreed upon between His Majesty and

the United States, and granted by His Majesty."<sup>45</sup> These propositions to reserve for future negotiations the subjects both of the fisheries and the navigation of the Mississippi were received by the American ministers for consideration.

An article relative to the slave trade was proposed by the British ministers, namely, "Whereas the traffic in slaves is irreconcilable with the principles of humanity and justice, and whereas both His Majesty and the United States are desirous of continuing their efforts to promote its entire abolition, it is hereby agreed, that both the contracting parties shall exert every means in their power to accomplish so desirable an object."<sup>46</sup> This was received by the American ministers for consideration.

The British ministers also offered a provision with reference to suits by the subjects of one nation in the courts of the other, namely, "That the citizens or subjects of each of the contracting parties may reciprocally sue in the courts of the other, and shall meet with no impediment to the recovery of all such estates rights, properties or securities as may be due to them

<sup>45</sup> Report of conference of Dec. 10, 1814; British Commissioners to Lord Castlereagh, Dec. 10, 1814; MS., British Foreign Office, 5, 102. Protocol of conference, Dec. 10, 1814 MS., Bureau of Indexes and Archives, "Treaty of Ghent" American State Papers, For. Rel., III., 743.

<sup>46</sup> *Ibid.*

by the laws of the country in whose courts they shall sue." This also was received for consideration.<sup>47</sup>

The American ministers suggested that doubts might arise as to the accuracy of the words in article eight which read, "a line drawn due west from the Lake of the Woods along the forty-ninth parallel of north latitude," and it was agreed that an alteration should be made to guard against any possible misunderstanding. The American commissioners also proposed some minor alterations in the article with respect to the various periods for the cessation of hostilities.<sup>48</sup>

The British ministers after this conference reported to their Government that they were confident that the American plenipotentiaries would accept all their propositions with the exception of that part which placed the right to the fisheries on the treaty of 1783. They thought that the suggestion made in conversation after the formal conference indicated that the American ministers expected the treaty to be signed, for Adams had suggested the signing of the treaty in triplicate to provide against possible accidents.<sup>49</sup> The British ministers considered it hopeless to expect a renunciation of the fisheries in return for the renunciation of the Mississippi. They believed that the Ameri-

<sup>47</sup> Protocol of conference, Dec. 10, 1814; MS., Bureau of Indexes and Archives, "Treaty of Ghent."

<sup>48</sup> *Ibid.*

<sup>49</sup> Goulburn to Bathurst, Dec. 10, 1814; Wellington's Supplementary Despatches, IX., 471-472.

can ministers would not make such an offer; and they thought it unwise for them to offer it as it would imply a doubt of the right of Great Britain to exclude the United States from the fisheries without such a renunciation. In their judgment the record of the protocol of the last conference, December 1, in which the American ministers proposed to give the free navigation of the Mississippi as an equivalent for the fisheries, would be sufficient evidence that the American ministers doubted their right to enjoy the fisheries without a stipulation. If now the American ministers should reject the British proposition, it might be used as an argument in favor of the claim of the United States.<sup>50</sup>

On the 11th, the American commissioners sent Hughes to request of the British commissioners a conference at their house the following day. At this conference the American ministers stated that they could not accede to the alterations in the first article relative to the words "belonging to either party and taken by the other," or to either of the modifications which had been proposed by the British ministers. They said that they considered the Passamaquoddy islands as part of the State of Massachusetts, and that any agreement which would give to Great Britain the possession of them would be equivalent to a temporary cession of

<sup>50</sup> Goulburn to Bathurst, Dec. 10, 1814; Wellington's Supplementary Despatches, IX., 471-472.

territory, which, as had been previously intimated, was entirely beyond their power to make except with the consent of the State of which it formed a part.<sup>51</sup> The American ministers indicated, however, that they would be "willing to admit such a modification as should secure the right of Great Britain from being affected or impaired by yielding possession of the islands to the United States." The value of the islands, it was said, was comparatively insignificant, but the principle upon which Great Britain required the possession of them was the point which they felt called upon to resist.<sup>52</sup>

To this the British ministers replied that the American ministers had assumed that a clause whose consequential effect would produce to Great Britain a continuance of the possession she now held implied cession of territory for America, and they had assumed this for the sole purpose of entangling this question with the suggested difficulty of ceding without the consent of the United States any part of its territory; that such a clause could not justly be so interpreted, as the United States would not be required to do any act which could prejudice her ultimate right. The British ministers declared that in fact no act whatever would be required of the United States, while Great Britain

<sup>51</sup> Report of conference of Dec. 12, 1814, given by the British Commissioners to Castlereagh, Dec. 13, 1814; MS., British Foreign Office, 5, 102.

<sup>52</sup> *Ibid.*

would be obliged to yield a possession the right to which was known under other title than that of war. They were willing, if need be, to accede to a clause which would especially guard the ultimate right against the prejudice which the American ministers feared might arise from the continued possession by Great Britain. The British ministers also admitted the comparatively small value of the territory in question, but claimed that yielding possession of the islands involved a point of honor on the part of Great Britain, and, if insisted upon, might make the conclusion of peace impossible.<sup>53</sup> The British commissioners maintained that in accordance with the principle of the objection made by the American ministers Great Britain could not be assured of the fulfillment of any award which might be made by commissioners with respect to the islands adversely to the claims of the United States. To this the Americans replied that the award, if made in favor of Great Britain, could not be defeated on the principle which they had stated, but it would determine that those islands had not been a part of the State of Massachusetts, and, therefore, no cession would occur. On the other hand, if the United States gave consent to Great Britain to have possession of the islands and it should turn out that they belonged to the State of Massachusetts, then, without its consent, a temporary

<sup>53</sup> Report of conference of Dec. 12, 1814, given by the British Commissioners to Castlereagh, Dec. 13, 1814; MS., British Foreign Office, 5, 102.



cession would have been made of a possession the right to hold which belonged to that State. The American ministers also repeated their objection to the alteration on the ground that it was not in accordance with the principle of *status quo ante bellum*.<sup>54</sup>

The American ministers declared that they were not authorized to admit the substitution proposed in the latter part of the eighth article, that the fisheries and the navigation of the Mississippi by British subjects for fair equivalents be left for future negotiation. They considered it unnecessary as it merely stipulated a future negotiation which might take place just as well without it. The only effect of such stipulation, they considered, was to abandon the ground upon which they claimed the right to the fisheries. Further, they objected strongly to the words of that article which sought to make the right appear dependent solely on a provision of the treaty of 1783; and said that the proposition had been annulled by the war. Those principles they had opposed and still would emphatically oppose. Gallatin stated again the American argument of the special character of the treaty of 1783 which prevented it from being abrogated, like ordinary treaties, by war; he said that the treaty constituted one great whole, and that all its parts partook of its general character and could not be separated from it or made the subject of different and distinct construction. As a

<sup>54</sup> Russell Journals, V., 531-532.

substitute for the paragraph in the eighth article offered by the British ministers the American plenipotentiaries proposed a general article to treat from time to time on all unsettled questions.<sup>55</sup> To this proposition the British objected.

The American ministers said that they would not object to the omission of the last clause of the eighth article and the substitution of another "if it were possible so to word one as to make the fisheries and the Mississippi the subject of future negotiation without prejudice to either party as to the manner in which its rights were derived."<sup>56</sup>

The British ministers replied that, if Great Britain were allowed to retain the possession of the Passamaquoddy islands, they would be willing to consider any proposition relative to the fisheries and the Mississippi in accordance with the view suggested by the American ministers; "provided such an article were worded so as to merely refer those subjects to future negotiations without tending to preclude either party from acting hereafter on his own view of those subjects." The British assured the American ministers that in this they went to the limit of their instructions.<sup>57</sup>

With reference to the new articles which had been

<sup>55</sup> Russell Journals, V., 531-532.

<sup>56</sup> Report of conference of Dec. 12, 1814, given by the British Commissioners to Castlereagh, Dec. 13, 1814; MS., British Foreign Office, 5, 102.

<sup>57</sup> Ibid.

proposed by the British, the American ministers expressed their willingness to adopt, at least in substance, the one with regard to the slave trade; but they objected to the one relative to the courts as unnecessary.<sup>58</sup> The conference ended with an intimation on the part of the American ministers that they would present in writing their ultimate decision on the two subjects presented by the British commissioners at the last conference.<sup>59</sup>

Upon returning to their rooms the American commissioners took up at once the discussion of the reply to be made. Gallatin and Clay thought a single page note would be sufficient, while Adams as usual preferred making a long reply.<sup>60</sup> The discussion continued in meetings of the American ministers during the next two days. A great diversity of opinion prevailed among the commissioners. Adams proposed a draft of a reply which insisted upon the rejection of both demands of the British Government. If, however, the islands were made an ultimatum by the British, that point might be conceded, but not the fisheries. Bayard was in favor of explicitly granting the point with regard to the islands, but insisting to the last upon the fisheries; Clay was in favor of reject-

<sup>58</sup> Russell Journals, V., 531-532.

<sup>59</sup> Report of conference of Dec. 12, 1814, given by the British Commissioners to Castlereagh, Dec. 13, 1814; MS., British Foreign Office, 5, 102.

<sup>60</sup> Memoirs of J. Q. Adams, III., 112.

ing both demands but eventually, if necessary, yielding both. He thought that by insistence upon both, one would be likely to be obtained. The draft presented by Gallatin indicated that the question of the islands would be yielded, and that the fisheries possibly would be.<sup>61</sup> Russell was for insistence upon the fisheries, but would yield them rather than have the war continue.<sup>62</sup> While Adams, Gallatin, and Clay all offered drafts, it was reserved for Gallatin again to prepare the final one. This with corrections and amendments was adopted on the 14th. It was copied and despatched to the British ministers that afternoon. The British secretary replied the same evening that the note had been referred to the British Government.<sup>63</sup>

The American note consented to the proposal of the British commissioners to omit the words which were originally proposed by them. It stated, with reference to the offer of the British commissioners to omit the words originally proposed by them in the first article on condition that the American commissioners would except the islands in Passamaquoddy Bay from the principle of mutual restoration, that the American ministers were willing to agree to the proposed exception, provided that the claim of the United States should not thereby in any way be affected. To insure this

<sup>61</sup> *Memoirs of J. Q. Adams*, III., 114-115.

<sup>62</sup> *Ibid.*, 117.

<sup>63</sup> *Ibid.*, 119.

result, and to prevent a temporary possession from being converted into a permanent possession, the American ministers proposed a clause providing that the title to the islands, if not settled within a given period, should revert to the party in whose possession they were at the commencement of the war; and, further, that "No disposition made by this treaty of the intermediate possession of the islands and territories claimed by both parties shall, in any manner whatever, be construed to affect the right of either."<sup>64</sup>

The American ministers refused to accede to the substitute offered in the last of article eight concerning the fisheries and the navigation of the Mississippi. With regard to their former proposition, they stated that for "the purpose of meeting what they believed to be the wishes of the British Government, they proposed the insertion of an article which should recognize the right of Great Britain to the navigation of that river, and that of the United States to a liberty in certain fisheries, which the British Government considered as abrogated by the war." They viewed this article as merely declaratory and would accede in this manner; but wanted no new article on either of those subjects. They referred to their previous offer to be silent with regard to both questions; but stated that

<sup>64</sup> American to British Ministers, Dec. 14, 1814; MS., Bureau of Indexes and Archives, "Treaty of Ghent"; American State Papers, For. Rel., III., 743-744.

to the stipulation now proposed, or to any other abandoning, or implying the abandonment of, any right in the fisheries claimed by the United States they could not subscribe. The stipulation that the parties hereafter would negotiate concerning those subjects was declared to be unnecessary. They would, however, be willing to consent "to an engagement, couched in general terms, so as to embrace all the subjects of difference not yet adjusted, or so expressed as to imply in no manner whatever an abandonment of any right claimed by the United States." They agreed to accede to the substance of the article on the abolition of the slave trade, but refused to admit the necessity of the article upon the courts. They maintained that the courts of the United States without such an article would be equally open to the claim of British subjects, and they depended upon the British courts for the same liberty for the citizens of the United States.<sup>65</sup>

The British commissioners upon receipt of the American note transmitted it at once to their Government.<sup>66</sup> In a letter to Bathurst, Goulburn expressed the belief that the proposition made by the American ministers regarding the Passamaquoddy islands would be satisfactory, provided the stipulation for the

<sup>65</sup> American to British Ministers, Dec. 14, 1814; MS., Bureau of Indexes and Archives, "Treaty of Ghent"; American State Papers, For. Rel., III., 743-744.

<sup>66</sup> British Commissioners to Castlereagh, Dec. 14, 1814; MS., British Foreign Office, 5, 102.

restoration of those islands to America in case a decision respecting them was not made within a certain limited time should be withdrawn; but said that the proposal should be rejected unless this change was made.<sup>67</sup> With respect to the fisheries he thought that an article like the one mentioned in the last despatch was the best arrangement that they could make, unless it should be deemed better to omit altogether any stipulation respecting the fisheries and the Mississippi and to make a statement distinctly of British rights.

Bathurst replied to the British commissioners that with respect to the alteration which was proposed in the first article, whereby Great Britain might remain in temporary occupation of the islands in Passamaquoddy Bay, there was no objection except the provision for the surrender of the islands to the United States in case no decision should be reached within a given number of years. This, it was stated, might occasion the postponement of any decision on the subject. There was no objection if a stipulation as to the rights of the islands should be a point of reference first to be decided by the commissioners.

Since the article on the fisheries appeared now the only point of great difficulty, the British ministers were instructed to accept the proposition made by the com-

<sup>67</sup> Goulburn to Bathurst, Dec. 14, 1814; Wellington's Supplementary Despatches, IX., 479.

missioners of the United States in the protocol of December 1, which was to omit the article altogether. Instructions were also given not to insist on the article which guaranteed to the subjects of each country the right to prosecute suits in the courts of the other country.

On December 22, the British ministers sent a note in reply to the American note of the 14th. In this they expressed their willingness to agree to that part of the article of the American ministers which made it imperative upon the boundary commissioners to decide the question of the ownership of the islands within a fixed time. They expressed the hope that the American ministers would be satisfied with the declaration "that it is the intention of His Majesty's Government to do all that belongs to them to obtain a decision without loss of time." They agreed to withdraw the proposed article on the fisheries, and offered to adopt the proposal of the American ministers, made at the conference the first of December, and repeated in their last note, namely, to omit altogether the article dealing with navigation of the Mississippi and the fisheries.<sup>68</sup>

The American ministers now saw peace in sight, although some of them, notably Clay, were not satisfied with the terms upon which it was to be concluded.

<sup>68</sup> British to American Ministers, Dec. 22, 1814; American State Papers, For. Rel., III., 744-745.



Orders were sent to Captain Boyd to have the *Transit* in readiness to start for the United States at a moment's notice.<sup>69</sup>

At a meeting of the American ministers on the evening of the 22d it was decided to ask for another conference with the British commissioners, although Clay was opposed to it. The request was made, and the next day the British ministers sent a note stating that they would meet at the house of the Americans at twelve o'clock that day, December 23. At this conference the American ministers agreed to the proposals made in the note of the British ministers of the 22d, and certain verbal alterations in the various articles were accepted.<sup>70</sup>

That portion of the first article of the treaty which had caused so much controversy as finally agreed upon read as follows: "Such of the islands in the bay of Passamaquoddy as are claimed by both parties shall remain in the possession of the party in whose occupation they may be at the time of the exchange of the ratifications of this treaty, until the decision respecting the title to the said islands, shall have been made in conformity with the 4th article of this treaty.

"No disposition made by this treaty as to such possession of the islands and territories claimed by both

<sup>69</sup> Memoirs of J. Q. Adams, III., 120.

<sup>70</sup> *Ibid.*, 122-124.

parties shall, in any manner whatever, be construed to affect the right of either."<sup>71</sup>

The American ministers made strong objection to that part of the article which stipulated for the payment in specie of the advances made by each Government for the maintenance of prisoners of war, on the ground of its imposing on the United States an unnecessary burden and of its requiring a mode of payment different from that in which by far the larger part of the advances had been made. The British, however, insisted, and it was allowed. The American commissioners saw in this a design on the part of the British to secure a profit of from fifteen to twenty per cent. upon the advances which they had made for American prisoners, these originally having been made in paper money.<sup>72</sup>

The British plenipotentiaries urged the article with reference to the prosecution of suits of law by the citizens or subjects of one nation in the courts of justice of the other. The Americans refused to consent to this article on the ground that their courts were open to all nations, and the acquiescence in such an article as this might imply that the subjects of Great Britain were not able to prosecute suits in the courts of the

<sup>71</sup> British to American Ministers, Dec. 22, 1814; American State Papers, For. Rel., III., 744-745.

<sup>72</sup> British Commissioners to Castlereagh, Dec. 24, 1814; MS., British Foreign Office, 5, 102; Memoirs of J. Q. Adams, III., 124.

United States without such provisions. The British at last gave way on this point.<sup>73</sup> The conference was adjourned until the next day for the signing of the treaty.

The British Ministry had hoped that their last communication would enable the commissioners to close the negotiations with a treaty of peace. They were, however, suspicious of President Madison, and feared he might not sign the treaty. For this reason it was stipulated that the war should not cease until after the exchange of ratifications at Washington. They counted upon having a strong English fleet in the Chesapeake and the Delaware at the time that Baker, the bearer of the British copy of the treaty, would reach Washington; and they also counted upon the disposition of the Eastern States to secede from the Union as likely to "frighten Madison." It was suggested that if Madison should refuse to ratify the treaty, the British Government should immediately propose to make a separate treaty with the New England States, which it was believed could be accomplished.<sup>74</sup>

The evening of the 24th the ministers of the two states met at the house of the British ministers for the purpose of attaching their names to the treaty. As previously agreed, it was signed in triplicate, the

<sup>73</sup> *Memoirs of J. Q. Adams, III.*, 124-125.

<sup>74</sup> *Liverpool to Castlereagh*, Dec. 23, 1814; *Wellington's Supplementary Despatches*, IX., 495.

British mission furnishing three copies and the American commissioners furnishing three. These were signed and exchanged, Lord Gambier delivering the three British copies to Adams, and Adams in turn delivering the three American copies to Lord Gambier. Lord Gambier expressed the hope that the treaty would be permanent, and Adams replied that he "hoped it would be the last treaty of peace between Great Britain and the United States."<sup>75</sup> Upon the ratification of either copy by the two Governments hostilities were to cease.

The British ministers at the conference the day before had consented to date the cessation of hostilities from the ratification by the two states, instead of the exchange of ratifications, which before they had demanded. However, they had insisted that such ratifications should be without alteration by either of the contracting parties.<sup>76</sup> They were criticized by their own Government for inserting this clause.

It was agreed by the two commissions that the fact of the signing of the treaty should not be made known until noon of the following day, when Baker should be able to make the announcement at London. A carriage was in readiness to convey him, immediately

<sup>75</sup> *Memoirs of J. Q. Adams, III.*, 126.

<sup>76</sup> Goulburn to Bathurst, Dec. 30, 1814; *Wellington's Supplementary Despatches*, IX., 516-517.

upon the signing of the treaty, to Ostend, where a vessel was waiting to take him to England.<sup>77</sup>

This eventful day prompted Adams to make the following entry in his diary: "I cannot close the record of this day without an humble offering of gratitude to God for the conclusion to which it has pleased him to bring the negotiations for peace at this place, and a fervent prayer that its result may be propitious to the welfare, the best interests, and the union of my country."<sup>78</sup>

<sup>77</sup> *Memoirs of J. Q. Adams, III.*, 126.

<sup>78</sup> *Ibid.*, 127.

## CHAPTER IX

### RATIFICATION AND RECEPTION OF THE TREATY

At once upon the signing of the treaty Anthony St. John Baker set out for London, carrying with him a copy of the treaty and despatches from the British commissioners to their Government. One of these despatches informed the British Foreign Office that Christopher Hughes, Jr., secretary of the American mission, had been furnished with a certificate of his being the bearer to the United States of one copy of the treaty of peace.<sup>1</sup> It was recommended that Henry Carroll, the bearer of a duplicate copy of the treaty, be permitted to proceed to the United States on the same ship which might be assigned to carry to America His Majesty's ratification.

The next day, December 25, the American ministers communicated to their Government the substance of the negotiations since the last despatches were sent on the *Chauncey* and announced the final result. The joint letter, in giving the account of the proceedings with reference to the fisheries and the Mississippi, stated

<sup>1</sup> British Commissioners to Castlereagh, Dec. 24, 1814; MS., British Foreign Office, 5, 102.

that the offer to exchange the one privilege for the other was that of the majority of the mission.<sup>2</sup> This wording was inserted at the request of Russell, upon the suggestion of Clay.

On the 28th, the American ministers sent a note to the British in reply to the request made by the latter in a note of December 7, which had asked for proofs of the charges made by the American Government with reference to the carrying away and sale of negroes by British officers. The American ministers stated that, not having been instructed to communicate proofs to the British Government for the purpose which the British Government had in contemplation, they would transmit the British note to the American Government to decide upon the propriety of its co-operation in that object which the British now had in view.<sup>3</sup>

Before leaving Ghent the American ministers gave a public dinner to the British ministers at which the Intendant of Ghent and numerous other officials were present. At the dinner Lord Gambier arose to give the first toast: "The United States of North America," but Adams courteously anticipated him in offering the toast: "His Majesty the King of England." At the same moment the band struck up "God save the King."

<sup>2</sup> American Ministers to Monroe, Dec. 25, 1814; American State Papers, For. Rel., III., 732-733; Russell Papers, MS., No. 1110.

<sup>3</sup> American to British Commissioners, Dec. 28, 1814; MS., Bureau of Indexes and Archives, "Treaty of Ghent."

When Lord Gambier afterwards arose to give his toast the band played the American patriotic air, "Hail, Columbia." The citizens of Ghent also gave a grand fête to the ministers of the two missions in celebration of the signing of the treaty. This was given in the beautiful Hôtel de Ville of that city.<sup>4</sup>

Carroll, whom the American ministers had commissioned to be the bearer of a copy of the treaty to the United States, left Ghent for London, December 26. He sailed from London, January 2, in the British ship of war *Favorite* in company with Baker, who had been authorized to be the bearer of the British copy of the treaty to America, and to act in the name and behalf of His Britannic Majesty for the exchange of ratifications of the treaty.<sup>5</sup> The copy of the treaty which he carried had been ratified by the Prince Regent in council at Carleton House,<sup>6</sup> December 27. This ratification was, however, merely nominal, because full powers had been granted to the British commissioners, unlike those of the American commissioners, to bind the Government to "accept, ratify, and con-

<sup>4</sup> Adams gave as a toast at this banquet: "Ghent, the city of peace; May the gates of the temple of Janus, here closed, not be opened again for a century!" (Memoirs of J. Q. Adams, III., 131, 139.)

<sup>5</sup> Castlereagh to Baker, Dec. 23, 1814; Memoirs and Correspondence of Castlereagh, X., 230-231.

<sup>6</sup> London Globe, Dec. 27, 1814.



firm" whatever<sup>7</sup> the commissioners should sign. Baker was empowered, upon the exchange of ratified copies of the treaty, to adopt measures for forwarding naval and military despatches, with which he was supplied, commanding the cessation of hostilities.<sup>8</sup> He was instructed to proceed to Washington with all possible speed and, upon his arrival there, to present to the American Secretary of State his letters of credence. He was to proceed to an exchange of ratifications provided no alteration or addition to the treaty was made by the American Government. Should the President refuse to ratify the treaty, Baker was ordered to continue to Halifax and there make known throughout the American States in every possible way the terms of the treaty.<sup>9</sup> If peace should ensue, he was to remain at Washington as chargé d'affaires until the restoration of diplomatic relations between the two countries.<sup>10</sup>

The *Favorite* arrived at New York, Saturday evening, February 11, but Baker did not reach Washington until the 17th. Christopher Hughes, bearing the unratified copy of the treaty, arrived at Washington by way of Annapolis, February 14. On the evening of that date the treaty was considered by the Cabinet,

<sup>7</sup> Full Powers of the British Commissioners; MS., British Foreign Office, 5, 102.

<sup>8</sup> Bathurst to Baker, Dec. 31, 1814; Memoirs and Correspondence of Castlereagh, X., 231-233; MS., British Foreign Office, 5, 105.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

and on the following day the President communicated it to the Senate for its advice and approval.<sup>11</sup> The Senate requested the President to transmit all the papers connected with the negotiations which had not previously been communicated. The next day, February 16,<sup>12</sup> the President submitted all the papers received since December 1, the date of the last transmission. The Senate, thereupon, voted unanimously to ratify the treaty,<sup>13</sup> so that when Baker, the bearer of the British copy of the treaty, arrived at the State Department at eleven o'clock on the evening of February 17, everything was in readiness for the exchange of ratifications, which at once took place between Baker and Secretary Monroe.<sup>14</sup> The next day the treaty was proclaimed and published.<sup>15</sup> In the exchange of ratifications it was agreed that the boundary commissioners to be appointed in accordance with the provisions of the treaty should act upon the same principles as were observed in the treaty of 1794.<sup>16</sup> The *Favorite*, returning to Great Britain, reached London March 13, and the rati-

<sup>11</sup> Richardson, Messages and Papers of the Presidents, I., 552.

<sup>12</sup> American State Papers, For. Rel., III., 730.

<sup>13</sup> Boston Weekly Messenger, Feb. 17, 1815.

<sup>14</sup> Baker to Castlereagh, Feb. 19, 1815; MS., British Foreign Office, 5, 106.

<sup>15</sup> Richardson, Messages and Papers of the Presidents, I., 560.

<sup>16</sup> Baker to Castlereagh, Feb. 19, 1815; MS., British Foreign Office, 5, 106.

fied treaty was delivered to Lord Castlereagh.<sup>17</sup> Knowledge of this event was immediately communicated to the Lord Mayor.<sup>18</sup>

The celerity with which approval was given to the treaty indicates clearly the attitude of the United States Government with reference to it. The Republicans, undoubtedly, were glad to bring to an end a war which had brought the Government into extreme difficulties, political and financial; while the Federalists, who had consistently opposed the war, naturally welcomed peace, especially as they hoped that it would restore again the commercial prosperity of New England. The Federalist press, it is true, which before had criticized the Government for not making peace, now criticized the terms of the treaty. It claimed that nothing had been secured save the cessation of hostilities, but even this, it admitted, was worth rejoicing over.<sup>19</sup> The Republican papers considered the treaty most acceptable, and eulogized the American commissioners in highest terms. Even the Federalist papers had nothing but commendation for the American representatives. The Philadelphia Gazette, before the treaty was signed, paid this high compliment to the American commissioners:

<sup>17</sup> Adams to Monroe, March 22, 1815; MS., Bureau of Indexes and Archives, Russian Despatches, II., No. 147.

<sup>18</sup> Bathurst to Baker, March 21, 1815; MS., British Foreign Office, 5, 105. St. James Chronicle, March 14, 1815.

<sup>19</sup> Boston Gazette, Feb. 16, 20, 27, 1815. New England Palladium, Feb. 24, 1815. Federal Republican (Georgetown), Feb. 20, 24, 1815.

“After a most careful and dispassionate survey of the correspondence which has taken place between the American and British commissioners at Ghent, every American with feelings of just pride and exultation, must confess that their Representatives on this occasion have manifested a power of reasoning, added to forcibleness of demonstration, chastity and comprehensiveness of language, which entitle them to a superior rank as able and intelligent diplomatists. The manner in which they have handled the subjects presented for their consideration; the promptitude and facility with which they have met and overcome every impediment in the course of their discussions, are evidence not only of a deep study and research, but of minds intrinsically devoted to the true interests of their country. In all the correspondence that has appeared, the American ministers evidently maintain a vast superiority, as much in the matter as in the style of the communications.”<sup>20</sup>

High praise was universally accorded the American commissioners for the able way in which they had conducted the negotiations. Not only had they appeared to be superior to the British commissioners in diplomatic tact, but also in the character of their notes.<sup>21</sup>

<sup>20</sup> Philadelphia Gazette, quoted in the National Intelligencer, Dec. 15, 1814.

<sup>21</sup> Madison to Adams, Dec. 17, 1814; Madison Papers, MS., VII., 81. G. W. Hay to Monroe, Jan. 6, 1815; Monroe Papers, MS., XIV., 1862.

The favorable reception of the treaty was reflected not only in the action of the Government and the language of the press, but in the spontaneous rejoicing of the people in city and town throughout the United States. As soon as the news of peace reached America it was quickly communicated to the cities and towns of the country by means of express riders who were paid large sums for their services.

In New York, where the news was first received, there was at once a great demonstration. A large procession was formed, and brilliant illuminations were seen throughout the city. Guns were fired, the public buildings were decorated, and every possible manifestation of joy was shown. The news of the treaty came eight days after Jackson's brilliant victory at New Orleans, and the two events were celebrated together; a transparency on the City Hall suggestive of the two showed the American eagle bearing in one talon the thunderbolts of war and in the other the olive branch of peace.<sup>22</sup>

The news of peace reached Philadelphia on Sunday, February 12, as the people were returning from church. There was general rejoicing, strangers greeting one another with good wishes, mutual congratulations, and hand shaking.<sup>23</sup> Here, too, a public celebration took

<sup>22</sup> New York Spectator, Feb. 13, 1815.

<sup>23</sup> Patterson to Russell, Feb. 20, 1815; Russell Papers, MS., No. 1067.

place commemorating both the peace and the victory at New Orleans. In Boston, where the news arrived on the 13th, the schools were dismissed, business was suspended, a procession immediately formed of the military organizations of the city, and a general celebration was voted by the legislature.<sup>24</sup> Similar demonstrations also occurred in the smaller places of the country.

At Washington the ratification of the treaty came in time to enable the restoration of peace to be celebrated on Washington's birthday. A large procession, in which all the trades were represented, took place. The proclamation of the ratification of the treaty was read and speeches were delivered. A banquet in the evening closed the day's celebration.<sup>25</sup> March 4, the President issued another proclamation appointing the second Thursday in April as a day of national thanksgiving for the establishment of peace.<sup>26</sup>

The treaty was the more acceptable to the public because by the victory of New Orleans the war closed with great credit to the American forces. This feeling was shown in a letter to one of the commissioners in which satisfaction was expressed "because in

<sup>24</sup> Patterson to Russell, Feb. 20, 1815; Russell Papers, MS., No. 1067. Otis Ammidon to Russell, Feb. 20, 1815; Russell Papers, MS., No. 1362. Boston Gazette, Feb. 16, 1815.

<sup>25</sup> Boston Weekly Messenger, Feb. 24, 1815.

<sup>26</sup> Richardson, Messages and Papers of the Presidents, I, 560-561.

the fulness of our glory we grant peace to a worsted enemy."<sup>27</sup>

The American commissioners themselves, though disappointed in not being able to secure any promise on the part of the British of a discontinuance of the practice of impressment or of fictitious blockades, and though they failed to secure in the treaty any renewal of the fishing privileges in British territory, were, nevertheless, satisfied that the treaty was, on the whole, honorable and fairly favorable to the United States. Adams in a letter to Monroe on the day of the signing of the treaty wrote as follows: "If the treaty is not precisely such as we could have wished, I firmly believe it is all which under the circumstances of the times, it was possible to obtain. . . . On our part we have yielded only that without which Peace would have been impracticable."<sup>28</sup> Gallatin in a letter to Monroe, December 25, said: "The treaty of peace we signed yesterday with the British ministers is, in my opinion, as favorable as could be expected under existing circumstances, as far as they were known to us."<sup>29</sup> Clay wrote: "The terms of this instrument are undoubtedly not such as the country expected at the

<sup>27</sup> John L. Smith to Russell, April 2, 1815; Russell Papers, MS., No. 585.

<sup>28</sup> Adams to Monroe, Dec. 24, 1814; MS., Bureau of Indexes and Archives, Russian Despatches, II., No. 144.

<sup>29</sup> Gallatin to Monroe, Dec. 25, 1814; Writings of Gallatin, I., 645-647.

commencement of the war. Judged of, however, by the actual condition of things, as far as is known to us, they cannot be pronounced very unfavorable; . . . judged from the pretensions of the enemy at the opening of the negotiation the conditions of the peace reflect no dishonor on us."<sup>30</sup> Russell, writing to Crawford, said: "I believe we have done the best, or nearly the best, which was practicable in existing circumstances."<sup>31</sup>

Public opinion in the United States, in general, was most favorable to the treaty.<sup>32</sup> The failure to secure any statement relative to impressment and paper blockades was not regarded as so important since these practices on the part of the British Government had ceased with the overthrow of Napoleon, and it was the general opinion that they would not be carried on again.<sup>33</sup> A few here and there whose financial interests were affected by the fall in prices which accompanied the news of peace were not pleased with the treaty. In New York brown sugar fell from \$26 per cwt. to \$12.50; tea from \$2.25 to \$1 per pound. Specie dropped from 22 per cent. advance to 2 per cent.

<sup>30</sup> Clay to Monroe, Dec. 25, 1814; Monroe Papers, MS., XIV., No. 1822.

<sup>31</sup> Russell to Crawford, Dec. 23, 1814; Crawford Transcripts, MSS. Div., Library of Congress.

<sup>32</sup> J. Smith to Russell, May 6, 1815; Russell Papers, MS., No. 2041. National Intelligencer, Feb. 16, 23, 1815. Madison to Benj. Austin, March 7, 1815; Madison Papers, MS., VII., 84.

<sup>33</sup> *Ibid.*



Tin fell from \$30 a box to \$25. Public stocks rose 19 per cent. Treasury notes appreciated 13 per cent.<sup>34</sup> A sudden depression in the price of gunpowder and all kinds of military and naval stores was noted.

The British Government, as has been shown, were glad to conclude peace even though they had been obliged to surrender practically every demand that they had made. The English press for the most part considered the treaty derogatory to Great Britain. The *London Globe*, the next day after the news was received from Ghent, said, after enumerating the conditions of the treaty: "In this description of the treaty, we read the humiliation of ministers in every line. It forms indeed a deplorable contrast with the high sounding threats and boasts of that part of the public press devoted to their service. The waiving of some rights, and the mere retention of others, is a miserable finale to a war that we were told must not cease until after the Americans had been 'confoundedly well flogged'; which, it was boasted, must dismember the union, overthrow the Government and sweep the American navy from the ocean, not leaving a single bit of bunting or a rag or stitch behind. But after the state to which ministers had brought the country by their extravagance, and the war by their incapacity, if they had been able to terminate it upon any terms not absolutely dishonorable and ruinous, if they had effected a lasting

<sup>34</sup> *National Intelligencer*, Feb. 23, 1815.

peace, although not an advantageous one, and not merely purchased a short and precarious respite, with a certainty of the renewal of war with increased force and violence at a time when America shall have, both internally and in her relation with the European Powers, many advantages which she does not now possess, we would not be disposed to complain."<sup>35</sup>

The London Times, also of the opposition press, was bitterly opposed to the ratification of the treaty.<sup>36</sup> In its issue of December 27 it announced what it called "the terms of the deadly instrument."<sup>37</sup> In an editorial of December 31<sup>38</sup> it professed to believe that the ratification of the treaty by Madison depended upon the outcome of the campaign against New Orleans. It denied that general satisfaction had been produced by the signing of the treaty, which could be shown from the fact that the funds had remained at a "dead level" instead of rising as might have been expected if general satisfaction and confidence prevailed.

To accept peace in the midst of reverses was humiliating to the English people. Peace would have been more palatable, it was said, had it come earlier when the British arms were successful.<sup>39</sup> The bril-

<sup>35</sup> London Globe, Dec. 27, 1814.

<sup>36</sup> London Times, Dec. 30, 1814.

<sup>37</sup> Ibid., Dec. 27, 1814.

<sup>38</sup> Ibid., Dec. 31, 1814.

<sup>39</sup> Beasley to Russell, Oct. 20, 1814; Russell Papers, MS. No. 1847.

liant success won by the small American navy, which had been an object of derision at the beginning of the war, wounded the pride of the British, which centered in their navy, then, as now, the first in the world. The *Naval Chronicle* of that date had as a motto: "The winds and waves are Britain's wide domain and not a sail but by permission spreads."<sup>40</sup> It was declared that the law of nations had always been the law of the strongest; that England was, therefore, *de jure* the dictator of the maritime law of the civilized world.<sup>41</sup> After the first victories of the American navy, the English papers stated that the United States navy must be crushed to atoms; that peace must not be entertained until that object should have been achieved.<sup>42</sup> The press with few exceptions had been very severe in its denunciations of the United States and, particularly, of Madison, who was supposed to have been the cause of the war.<sup>43</sup> The papers had throughout the peace negotiations insisted that peace should not be made until America should have been "beaten into submission."<sup>44</sup> Peace made at New York or Washington,<sup>45</sup> and "at the point of the bayonet,"<sup>46</sup> was pref-

<sup>40</sup> *National Intelligencer*, Nov. 1, 1814.

<sup>41</sup> *London Evening Star*, quoted in the *National Intelligencer*, April 3, 1813.

<sup>42</sup> *London Times*, July 2, 1814.

<sup>43</sup> *Ibid.*, May 17, 1814.

<sup>44</sup> *London Sun*, July 22, 1814.

<sup>45</sup> *London Times*, July 2, 1814.

<sup>46</sup> *London Sun*, Aug. 23, 1814.

erable to negotiations at Ghent. After the British victories of August and September it had been declared that the fancied conquerors of Canada would "be mighty glad to come on their knees and cry 'Paenitet. Miserere nostrum.'"<sup>47</sup> The separation of the New England States from the Union and the alliance of these with Great Britain was declared as likely to follow.<sup>48</sup>

The popular British demands, which the British commissioners had presented at Ghent, as we have seen, had included the recognition by the United States of the maritime claims of Great Britain; the restitution of Louisiana; the rearrangement of the boundary in accordance with the wishes of Canada; the establishment of a permanent Indian territory; and the exclusion of the United States from all participation in the fisheries of British North America.<sup>49</sup>

In view of all these claims it was difficult to become reconciled to a treaty which secured scarcely one of the things expected and which concluded a war which had been far from creditable to British arms. In this war, according to one of their own papers, with a navy on the American coast exceeding that of the enemy in the proportion of ten to one, Great Britain had lost

<sup>47</sup> London Times, Oct. 15, 1814.

<sup>48</sup> London Star, Sept. 29, 1814; London Times, April 15, 1814.

<sup>49</sup> National Intelligencer, April 28, 1814; Boston Weekly Messenger, Aug. 5, 1814.

two out of every three fights and had lost three times as many men. She also had had seventeen hundred merchant vessels captured.<sup>50</sup> To make peace with this record, made vastly worse by the closing campaign of the war, was thought to invite the scorn of other nations. The London Times said:<sup>51</sup> "They will reflect that we have attempted to force our principles on America, and have failed. Nay, that we have retired from the combat with the stripes yet bleeding on our backs—with the recent defeats at Plattsburg, and on Lake Champlain, unavenged. To make peace at such a moment, they will think, betrays a deadness to the feelings of honor, and shows a timidity of disposition, inviting further insult. If we could have pointed to America overthrown, we would surely have stood on a much higher ground at Vienna, and everywhere else than we possibly can do now. Even yet, however, if we could but close the war with some great naval triumph, the reputation of our maritime greatness might be partially restored: but to say that it has not hitherto suffered in the estimation of all Europe, and what is worse, of America itself, is to belie common sense and universal experience. 'Two or three of our ships have struck to a force vastly superior!'—No, not two or three, but many, on the Ocean, and whole squadrons on the Lakes; and the numbers are to be viewed with relation to the comparative magnitude of

<sup>50</sup> Edinburgh Review, Nov., 1814.

<sup>51</sup> London Times, Dec. 30, 1814.

the two navies. Scarcely is there one American ship of war which has not the boast of a victory over the British flag, scarcely one British ship in thirty or forty that has beaten an American. Our seamen, it is urged, have on all occasions fought bravely. Who denies it? Our complaint is, that with the bravest seamen, and most powerful navy in the world, we retire from the contest when the balance of defeat is so heavily against us. Be it accident, or be it misconduct, we enquire not now into the cause; the certain, the inevitable *consequences* are what we look to, and they may be summed up in a few words—the speedy growth of the American navy—and the recurrence of a new and much more formidable American war. . . . We are well convinced, that every ship, and every sailor, employed in maintaining the vital contest for our maritime ascendancy, far from diminishing, will add a proportional weight to our influence at Vienna; but in truth, Vienna and its fêtes, and all its negotiations, are infinitely insignificant to us now, compared with the growth of the American navy and the probable loss of our transatlantic provinces. With respect to the latter point, it is certain that the present treaty will produce the most serious discontent among the Canadians, when they find that the great object of their wishes, a secure frontier communication, is referred to the decision of commissioners.”<sup>52</sup>

<sup>52</sup> London Times, Dec. 30, 1814.

The prediction of this paper that the treaty would not be satisfactory to Canada proved true. The people of British North America had been clamorous for a change in the boundary between those provinces and the United States which should give them absolute control of the navigable rivers and lakes lying between the two, with the adjacent territory, which would prevent invasions from the United States by water.<sup>53</sup> They were also no less insistent upon excluding the Americans from the former fishing privileges. A memorial from Newfoundland, a few months before the peace negotiation began, pointed out the advantages that had accrued to Canadian fishermen with the elimination of American competition during the war. It strongly urged the permanent exclusion of foreign fishermen from the Newfoundland fisheries, giving as an additional reason for such action that the increased numbers of native fishermen afforded larger facility for national defense.

The anti-ministerial papers, the London Morning Chronicle and the London Courier, were favorable to the treaty, and considered the terms as most honorable for the country inasmuch as Great Britain had yielded nothing in the treaty with reference to the maritime

<sup>53</sup> Quebec Gazette, quoted in New York Spectator, July 2, 1814; Quebec Mercury, Nov. 8, quoted in New York Herald, Dec. 2, 1814.

questions.<sup>54</sup> Party feeling so strongly actuated the press that it affords no sure index of the public sentiment. That the people, however, rejoiced in the restoration of peace was seen in the demonstrations with which they greeted the first news.<sup>55</sup> At Birmingham a large crowd witnessed the arrival of the mail which brought the news of the treaty. They immediately took the horses out and drew the coach to the post-office with loud acclamations.<sup>56</sup> The manufacturing and mercantile classes were especially glad to see peace, for it gave promise of renewed prosperity.

The British commissioners were not the recipients of such universal commendation as that bestowed upon the representatives of the United States. When the treaty was discussed in the House of Commons, April 11, 1815, in connection with a motion which had been made proposing an address of thanks to the Prince Regent for the treaty of peace, the British commissioners were severely censured for having acted with "gross mismanagement" in the negotiations. The basis of the criticism was that "in this treaty no one subject of dispute between the two countries that existed before its signature does not still exist and all the pretensions advanced by His Majesty's ministers

<sup>54</sup> London Morning Chronicle, Dec. 27, 1814; London Courier, Dec. 27, 1814.

<sup>55</sup> Boston Weekly Messenger, Feb. 17, 1815.

<sup>56</sup> Adams, History of the United States, IX., 54-55. London Courier, Dec. 30, 1814.



in the course of the negotiations were, one by one, abandoned by them." Alexander Baring and others spoke in a similar condemnatory way. Goulburn spoke in defence of himself and his colleagues. The motion was carried by a vote of 128 to 37.<sup>57</sup> In the House of Lords two days later the ministers were censured when discussion arose over a motion made by the Marquis of Wellesley for an address to the Prince Regent requesting him to place before the House copies of the correspondence between His Britannic Majesty's plenipotentiaries and those of the United States. Earl Bathurst, Secretary for War and the Colonies, had great difficulty in defending the ministers and in preventing the passage of the motion.<sup>58</sup>

One feature that marred the negotiations at Ghent that is indissolubly connected with the treaty and with its negotiation is the unpleasant feelings that were aroused and that continued to be manifested in later years by certain members of the commission in their relations to each other. The smouldering personal ill feeling which flashed up during many of the discussions of the commissioners broke into a flame in the last conferences. The most violent controversies arose over the fisheries and the Mississippi question, but even such a small matter as the final disposal of the papers and documents caused a bitter quarrel in the mission. Gallatin thought that the papers should be

<sup>57</sup> Annual Register, 1815, 15-17.

<sup>58</sup> *Ibid.*, 17-18.

sent to Beasley, the chargé d'affaires at London, for the use of the commissioners engaged in negotiating a commercial treaty. Clay, on the other hand, thought that all the papers should be sent by the *Neptune* to Washington.<sup>59</sup> At a meeting on December 30, Bayard, Clay, and Russell, Adams being absent, voted that Adams should transmit all papers, maps, and other articles of the mission to Washington, and a letter was addressed to him to that effect. Adams replied to this communication on January 2.<sup>60</sup> He maintained that it was in accordance with general usage in such cases for the head of the mission to retain all papers unless directed by his Government to make some special disposition of them. He claimed responsibility for the papers, and expressed his unwillingness to deliver them except to some one authorized to receive them. He refused to consider the paper signed by Bayard, Clay, and Russell as the act of the majority of the mission since it had been signed without consultation of the whole mission. In consequence of the retention of these papers beyond the time of the sailing of the vessel which carried the treaty, the papers connected with the final negotiations were not presented to Congress at the time of the ratification of the treaty.

It was not until the spring of 1822 that these last

<sup>59</sup> Memoirs of J. Q. Adams, III., 129-130.

<sup>60</sup> Adams to Bayard, Clay, and Russell, Jan. 2, 1815; Russell Journals, V., 559-560.

papers were given to the public. At this time John Quincy Adams was a candidate for the Republican nomination for the Presidency. Jonathan Russell, then a member of Congress, and chairman of the Committee on Foreign Relations,<sup>61</sup> was bitterly opposed to the candidacy of Adams, favoring instead that of Clay.<sup>62</sup> Russell thought that he might prejudice the West against Adams by making it appear that in the negotiations at Ghent Adams had been willing to sacrifice the western interests for those of the East in offering to grant to the British the right of navigating the Mississippi in exchange for the fishing privileges. Russell succeeded in getting one of his colleagues in Congress to propose a resolution requesting the President to have laid before Congress all the correspondence in connection with the treaty of Ghent which had not been made public. The resolution was laid on the table until the next day, January 17, when it was passed.<sup>63</sup>

On February 21, the President communicated to Congress the papers.<sup>64</sup> These failed to give the opponents of Adams the material for criticism which they had expected. Later, April 19, the letter of Russell written to Monroe February 11, 1815, giving the reasons why he had differed from the majority on the

<sup>61</sup> Clay to Russell, Jan. 2, 1822; Russell Papers, MS., No. 419.

<sup>62</sup> Russell Papers, MS., No. 1724.

<sup>63</sup> Annals of Congress, 17th Cong., 1st sess., 733-734.

<sup>64</sup> *Ibid.*, 1147.

exchange of the Mississippi privileges for the fisheries, was called for by Congress. The Secretary of State reported to the President that the letter called for was not to be found in the archives of the State Department, but that Jonathan Russell had left at the State Department what purported to be a copy of that letter.<sup>65</sup> However, before this was given to Congress the original was found by Adams among the private papers of President Monroe. The original letter had been marked private by Russell and so had not been filed with the public documents. Monroe communicated to Congress, May 4,<sup>66</sup> the knowledge of the two letters, but considered it unwise to submit the letters themselves and the remarks which Adams had added unless the House should specially call for them. Congress then made a second call, which Russell claimed was at the instigation of Adams. The President then sent the letters in a message of May 7.<sup>67</sup>

Russell was greatly censured for attempting to convert a private letter into a public document.<sup>68</sup> Adams and he carried on a most undignified controversy in the public press.<sup>69</sup> The purported copy which Russell

<sup>65</sup> Annals of Congress, 17th Cong., 1st sess., 1791.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*, 2170.

<sup>68</sup> Niles' Register, XXII., 220.

<sup>69</sup> Niles' Register (Russell's reply), XXII., 296-304. Niles' Register (Adams's rejoinder), XXII., 327-336.

left with the Secretary of State unfortunately contained many variations from the original. Adams published in a pamphlet these letters in parallel columns.<sup>70</sup> Of 172 variations pointed out by Adams, only two or three were of any real consequence, most of them being the underlining of a word, the order of the words, or slight change in phrasing. The most important change in the copy was found where Russell enlarged upon the reasons which actuated the minority in opposing the exchange of the two privileges. Here he placed the emphasis, as he had not in the original letter, upon the fact of its being contrary to the instructions of April 15, 1813. Russell's explanations were never wholly satisfactory even to his friends. He claimed that the difference was immaterial and that he had purposed to present to the State Department an exact copy indicating the variations, but that before he saw Adams and had an opportunity to present such a copy, which he had prepared and had in his pocket, the original had been found.<sup>71</sup> When Clay<sup>72</sup> expressed regret at the divergence in Russell's letters and refused to side with him in his controversy with Adams, Russell bit-

<sup>70</sup> Duplicate letters of J. Q. Adams; British and Foreign State Papers, IX., 563-565.

<sup>71</sup> Russell to Clay, August 7, 1822; Russell Papers, MS., No. 817.

<sup>72</sup> Clay to Russell, Sept. 4, 1822; Russell Papers, MS., No. 421.

terly denounced him,<sup>73</sup> although he had been heretofore a great admirer of the brilliant young Kentuckian.

At the close of the negotiations Russell, in a letter to Crawford, American minister at Paris, gave expression to his feeling toward his colleagues, and more especially toward Adams, in these words:<sup>73</sup> "In noticing the diversity of opinion which may occasionally occur, on particular points, between the members of the mission to which I belong and which undoubtedly arises from a difference of the impression which the same circumstances make on different men however sincerely united in the pursuit of the same ultimate object, I by no means set up for infallibility, nor am I confident that the course of which I may be the advocate, is the best. I am still farther from intending to insinuate any reproach against the patriotism, or integrity or intelligence of my colleagues because I happen to be so unfortunate as not to accord with them in my views of all the subjects, which, in the course of this negotiation, are presented for discussion. My only object in communicating to you these things is to make you better acquainted with the character of our proceedings, to show you that both sides of a question have been examined, and to profit by your information and advice, if it is possible to be obtained in season to in-

<sup>73</sup> Russell to Crawford, Dec. 23, 1814; Crawford Transcripts, Library of Congress.

fluence the final decision. (1) There are so many agents informing the opinions and producing the convictions of a man, besides his reason, that his argument, however sincere and plausible, may hold only a subordinate rank, and be but the instrument of constitutional infirmity, prepossession or prejudice. (2) The texture of the nerves is a great thing even with great men, the fear or the firmness that results from it may have more concern in giving direction to the policy of an able statesman than his understanding. (3) Great irritability of fibre is still more dangerous. It sports with the judgment and sometimes the character of its victim. It betrays him into inconsistency and extravagance and, after raising him into flights of eccentricity, and perhaps of eloquence, leaves him a prey to error and absurdity. If this unfortunate man should, at the same time, be tainted with family pride or infected with the conceit of literary acquirement or of local importance, his reasoning faculties and his patriotism are necessarily circumscribed within very narrow limits and he is liable to mistake the tasteless ostentation of pedantry for science and his little personal pretensions and the motives of his vicinage for the great interests of his country.

“The influence of habit and of education is also unsafe, and the wisest and best of men may in vain believe themselves free from the prejudices it necessarily engenders. A long coöperation with a party or

a sect imbues the very soul with their colour and whatever purity we may affect, or sincerely endeavor to attain, we still give the same tinge to everything which we touch. A professional education is, likewise, apt to impose fetters on the mind and to give a mechanical and artificial character even to our reasoning. The tanner believed that leather was the best material for fortification and the common lawyer will cite, authoritatively, a black letter maxim as a clincher on a point of public right.<sup>74</sup>

“Aware of these and other frailties of human nature, if I am disposed perhaps to distrust too much the opinions of others, I am taught a salutary diffidence in my own. When, however, I encounter a man in whose heart all the noble passions have found their home, and whose head is unobscured by the fogs of a false education, whose great object is the welfare of his country and who pursues this object with an instinctive good sense that never deceives, I listen to him with unsuspecting confidence, and promptly accord to ingenuousness that implicit faith which I am apt to deny to mere ingenuity.”<sup>75</sup>

Five days after the treaty of peace was signed the American commissioners sent a note to the British commissioners with reference to a commercial convention which they stated they had power “to treat or

<sup>74</sup> Russell to Crawford, Dec. 23, 1814; Crawford Transcripts.

<sup>75</sup> Ibid.



negotiate for, and, in the name of the United States, with a minister or ministers of His Britannic Majesty, furnished with the like power, concerning the general commerce between the United States and Great Britain and its dominions and dependencies and concerning all matters and subjects connected therewith which may be interesting to the two nations, to conclude and sign a treaty or convention touching the same premises."<sup>76</sup> The British commissioners replied the following day that their powers had expired and, therefore, they could make no answer to the American note, but that they would transmit it to their Government for consideration.<sup>77</sup>

As soon as the ratification of the treaty of peace became known Gallatin and Clay went to London in order to learn the disposition of the British Government toward a commercial treaty.<sup>78</sup> Soon after their arrival they were invited by Lord Castlereagh to an interview in which he expressed his desire that the commissioners who had negotiated the treaty of Ghent, together with Sir Frederick John Robinson, should, unofficially, talk over the subjects of the proposed

<sup>76</sup> American to British Ministers, Dec. 29, 1814; MS., Bureau of Indexes and Archives, "Treaty of Ghent."

<sup>77</sup> British to American Commissioners, Dec. 30, 1814; MS., Bureau of Indexes and Archives, "Treaty of Ghent."

<sup>78</sup> Clay and Gallatin to Secretary of State, May 18, 1815; American State Papers, For. Rel., IV., 8-10.

commercial treaty to find out whether it was likely that any general principle could be agreed upon as a basis.<sup>79</sup> It was recommended that the American commissioners should consult together upon this and other subjects suggested by Lord Castlereagh. The following day Gallatin and Clay reported to Goulburn their willingness to meet the British commissioners for an unofficial conference. They heard no more from the British Government for nearly three weeks. Gallatin and Clay then intimated their intention of leaving.<sup>80</sup>

A few days after they were invited by Robinson to call at his office.<sup>81</sup> This they did and found there Goulburn and Dr. Adams. Upon the British commissioners requesting to hear the propositions which the American commissioners had to offer, it was remarked by the American commissioners that there were, commonly, in a treaty of commerce two classes of subjects: commercial regulations applicable to a state of peace as well as of war, and regulations referring to the rights and duties of the two parties when one was at war and the other at peace. The American commissioners stated that they had been instructed on both these subjects by their Government. They presented as subjects to be included in a commercial

<sup>79</sup> Conversation between Castlereagh and Clay and Gallatin, April 16, 1815; American State Papers, For. Rel., IV., 11.

<sup>80</sup> Clay and Gallatin to Secretary of State, May 18, 1815; American State Papers, For. Rel., IV., 8-10.

<sup>81</sup> *Ibid.*

treaty the following:<sup>82</sup> That the two states with respect to each other should be placed on the footing of the nation most favored; that all discriminating duties on tonnage or merchandise, whether of imports or exports, should be abolished; that the trade between America and the British West Indies should be regulated and placed on a more permanent basis; that the nature and kind of intercourse between America and the adjoining British provinces should be defined and provided for; and that trade with the Indian possessions of Great Britain should be open to America without being restricted to direct intercourse in the outward and return voyage. They expressed their desire to provide for the question of impressment, and stated that the American Government was willing to prohibit merchant vessels of the United States from employing British seamen. The recent act of Congress on this subject, it was declared, would largely remove the difficulties, and, therefore, Great Britain should be willing to abandon the practice.<sup>83</sup> An arrangement on the trade between the United States and the colonies of a state at war with Great Britain was proposed, and also a definition of blockade was suggested as desirable.

The British commissioners were unwilling to discuss

<sup>82</sup> Clay and Gallatin to Secretary of State, May 18, 1815; American State Papers, For. Rel., IV., 8-10.

<sup>83</sup> Ibid.

the points under the subject applying to a belligerent state of one of the parties. They wished to consider commercial relations in time of peace only. They objected to the discussion of impressment; but stated that their Government would receive favorably any proposition for the abolition of discriminating duties. Trade with the East Indies might be conceded; but upon that with the West Indies it was not practicable to enter into any stipulation. The British commissioners announced that they would refer the substance of the conversation to the Cabinet.<sup>84</sup>

Five days later, April 16, again upon the invitation of Robinson, the American commissioners called at the office of the former and met there the British commissioners. These had received instructions from the Cabinet to reply to the topics before mentioned by the American commissioners. They stated that of commercial intercourse between the two states the British Government were willing to treat on the footing of the most favored nation, and were willing to agree upon arrangements for the abolition of discriminating duties; they were also willing to admit the United States to the East India trade without restrictions of direct trade on outward voyage; but should be obliged to insist on that with respect to the return voyage, as was contended in the treaty of 1794. The British commissioners claimed that if the United States were to

<sup>84</sup> Clay and Gallatin to Secretary of State, May 18, 1815; American State Papers, For. Rel., IV., 8-10.

offer no equivalent for the privilege, it should, at least, show a spirit of accommodation in the other parts of the commercial arrangement, in the fur trade for instance. They maintained that the West India trade policy was so fixed that it could not well be changed, but that trade with the North American possessions would be willingly discussed and arranged to the satisfaction of both states. Any proposition that the American commissioners might have to offer relating to conditions where one state was at war would be considered. Definition of blockades was declared to be unnecessary, as any question arising in connection with them must relate to fact rather than to principle. It was held that difficulties existed in connection with any arrangement of colonial trade inasmuch as it was not known what policy France had adopted. Impressment was also declared to be impracticable for discussion.<sup>85</sup>

The American commissioners asserted, with reference to the suggested fur trade, that they were positively forbidden to consent to any renewal of trade between British subjects and the Indians. They maintained that the reasons for this were political, not commercial. The commissioners offered to enter upon the negotiation, reserving the right to withdraw if circumstances should make it eligible to do so, and to leave Adams, who was daily expected, to conclude it.<sup>86</sup>

<sup>85</sup> Clay and Gallatin to Secretary of State, May 18, 1815; American State Papers, For. Rel., IV., 8-10.

<sup>86</sup> *Ibid.*

The British commissioners, thereupon, agreed to provide themselves with the necessary powers for the negotiation.<sup>87</sup> Adams had in the meanwhile reached London. He arrived there May 25 from Paris, where he had been since the signing of the treaty of Ghent, waiting for his commission as Ambassador to Great Britain. On June 5, the British commissioners sent an invitation for a meeting on the 7th. At the conference which was held on that date their powers were exchanged. The American commissioners delivered a projet of a commercial convention consisting of six articles. In this projet they gave up all reference to seamen and maritime rights, as it appeared impossible to secure any arrangement on that subject. Adams had previously interviewed Lord Castlereagh, and had become convinced that nothing could be arranged on the subject of impressment.<sup>88</sup> The proposed treaty was confined strictly to commercial subjects. In drawing up the projet, the treaties of 1794 and 1806, the instructions given the commissioners in 1807, and recent legislation of Congress were used.<sup>89</sup>

The articles of this projet provided for the following objects: freedom of intercourse between the

<sup>87</sup> Clay and Gallatin to Secretary of State, May 18, 1815; American State Papers, For. Rel., IV., 8-10.

<sup>88</sup> Adams to Monroe, June 22, 1815; MS., Bureau of Indexes and Archives, British notes, 19, No. 1.

<sup>89</sup> Gallatin to Monroe, Nov. 25, 1815; Writings of Gallatin, I., 662-665.

United States and the British possessions in Europe; the abolition of all discriminating duties in trade between the United States and the British possessions in Europe; liberty to the United States of trade with the British East Indies; trade without discriminating duties between the subjects of the United States and the British North American possessions, including freedom of navigation on all waters entering those possessions; the mutual recognition of consular rights; each state with respect to the other to be placed on the basis of the "most favored nation."

The British ministers presented a contre-projet which consented to the article with respect to the abolition of discriminating duties; to that concerning freedom of intercourse between the United States and British European possessions with certain omissions; and to the article respecting consular arrangements. In the article with respect to liberty of trade with the British East Indies restrictions were made to certain ports and to direct trade on the return voyage between such ports and the United States. The article with reference to the East India trade was made a separate article outside of the treaty, as the duration of it was to be for two years only. The "most favored nation" arrangement was to be confined to the United States and the British European possessions.<sup>90</sup> The provision

<sup>90</sup> Gallatin to Monroe, Nov. 25, 1815; Writings of Gallatin, I., 662-665.

for trade with the British North American possessions and that for freedom of navigation were limited.

The American plenipotentiaries in reply to the contre-projet of the British proposed to reinstate the clauses which the British plenipotentiaries had omitted, notably that which provided that neither the intercourse between the United States and His Britannic Majesty's possessions in the West Indies nor that by sea between the United States and His Britannic Majesty's possessions in North America should be affected by any article in the treaty.<sup>91</sup>

Conferences between the two missions occurred the 11th and the 21st. The American commissioners declined to accept the arrangement limiting the trade privilege with the East Indies to two years, and instead proposed the inclusion of that privilege in the treaty itself and the duration of the treaty for four years. The commissioners being unable to agree upon terms of trade between the United States and Canada, the article upon that subject was dropped at the proposal of the American commissioners, as was also the "most favored nation" article. The arrangement for the abolition of discriminating duties, in conformity with the recent act of Congress, was proposed by the American commissioners and accepted by the British. On the 29th the British announced their readiness to

<sup>91</sup> American to British Plenipotentiaries, June 17, 1815; American State Papers, For. Rel., IV., 15.



agree to a convention for four years which should contain the whole of the article with reference to the abolition of discriminating duties and also the separate article with reference to the East Indies as proposed by Great Britain; the latter article was to be in force for four years.<sup>92</sup>

On June 30, the American commissioners agreed to the treaty as finally arranged, but reserved the right for either state, at the expiration of four years, to refuse to renew, or to modify, any of the stipulations of the treaty.<sup>93</sup> The treaty was signed July 3. The signatures followed the reciprocal arrangement which Secretary Monroe had urged in his letter to Adams,<sup>94</sup> March 13, 1815. In the projet offered by the American commissioners the name of the United States was placed first in the preamble and ratifying clause. In the contre-projet presented by the British commissioners His Britannic Majesty appeared first. The American commissioners insisted on the use of the alternative principle. The British commissioners objected on the ground that with these variations the two copies could not be the exact counterparts of each other. They claimed to be ignorant of any general usage of such a principle. The American com-

<sup>92</sup> British to American Plenipotentiaries, June 29, 1815; American State Papers, For. Rel., IV., 17-18.

<sup>93</sup> American to British Plenipotentiaries, June 30, 1815; American State Papers, For. Rel., IV., 18.

<sup>94</sup> Monroe to Adams, March 13, 1815; Writings of Monroe, V., 375-377.

missioners referred them to their own Foreign Office to prove that usage. The British at last consented to yield the point. In the copy of the treaty which was carried by Gallatin to America, therefore, the United States was named first in the preamble, ratifying article, and other articles where the two states were mentioned together, and the signature of the American plenipotentiaries appeared first, while in the copy of the treaty delivered to His Britannic Majesty the reverse order obtained.

The treaty, as at last arranged, contained five articles. The first provided for freedom of intercourse between the United States and Great Britain's European possessions. Article two contained an agreement upon the abolition of all discriminating duties and the inclusion of the "most favored nation" arrangement as to trade between the United States and the dominions of Great Britain in Europe. Intercourse between His Britannic Majesty's possessions in the West Indies and on the continent of North America was declared to be unaffected by any of the articles of the treaty. By the third article American vessels were admitted to the principal settlements of the British dominions in the East Indies, Calcutta, Madras, Bombay, and Prince of Wales Island, and trade was allowed to American citizens at these places in all except prohibited articles, except that in time of war between Great Britain and any state special permission of the British Govern-

ment should be necessary for trade in military and naval stores and in rice. No discriminating duties were to be placed on American vessels, and the United States was to be granted the same privilege in the East India trade as the most favored European nation. United States vessels were excluded from the coasting trade of these territories, though they might proceed from one principal station to another in direct trade. They were also allowed to touch at British ports for refreshment in their passage to and fro. Article four provided for consular arrangements in the territories of the two states. The last article contained provisions for ratification and the duration of the treaty, which was to be four years from the date of signing.<sup>95</sup>

The ratification of the treaty by the British Government was delayed<sup>96</sup> owing to the strength of the opposition party. The provisions of the treaty were severely criticized. It was claimed to be disadvantageous to Great Britain and in every respect favorable to the United States.<sup>97</sup> The British chargé d'affaires at last notifying the Department of State that he was ready to exchange ratifications,<sup>98</sup> President Madison, as soon as

<sup>95</sup> Malloy, *Treaties and Conventions*, I., 624-627.

<sup>96</sup> Bathurst to Baker, Sept. 6, 1815; MS., British Foreign Office, 5, 106.

<sup>97</sup> J. Q. Adams to Monroe; MS., Bureau of Indexes and Archives, British notes, 19, No. 17.

<sup>98</sup> Baker to Monroe, Nov. 24, 1815; *American State Papers*, For. Rel., IV., 18.

the Senate convened, laid before that body the treaty accompanied by letters connected with it.<sup>99</sup> The treaty was at once ratified. It was proclaimed by the President in a message to Congress December 11.<sup>100</sup> Though the British North American and West Indian trade was not provided for and impressment was omitted from the treaty, still upon the whole the treaty was regarded as favorable to the United States.<sup>101</sup>

With the signing of the commercial treaty the duties of the American commissioners as a mission were ended. As has been shown, only three of the five commissioners negotiated for the commercial treaty. Bayard was ill at this time and had returned to the United States. He died at his home in Wilmington, Delaware, shortly after reaching there. Jonathan Russell, after the completion of the negotiations at Ghent, had returned to Stockholm after visiting Paris on the way. The reason which he assigned for not going to London with his colleagues was his disbelief in the possibility of securing a commercial treaty at that time.<sup>102</sup> It was quite likely that his animosity towards Adams had much to do with his unwillingness to serve further on the mission.

<sup>99</sup> American State Papers, For. Rel., IV., 7-8.

<sup>100</sup> Richardson, Messages and Papers of the Presidents, I., 569-570.

<sup>101</sup> Madison to Gallatin, Sept. 11, 1815; Writings of Gallatin, I., 652-653.

<sup>102</sup> Russell to Monroe, May 30, 1815; Russell Journals, VI., 56 (copy).

Clay and Gallatin left England<sup>103</sup> on July 23, and returned to the United States. They were upon their arrival the recipients of many social honors and distinctions.<sup>104</sup> Clay resumed his old position in Congress, to which he had been re-elected while absent. Gallatin was offered his former position as Secretary of the Treasury. He declined this position, and was soon after appointed minister to France, where he remained for seven years. He was the third member of the mission to continue in diplomatic service through appointment to a foreign court. It was Madison's purpose to appoint Bayard minister to the Court of St. Petersburg, but Bayard's health prevented the execution of this plan.

In neither the treaty of peace nor the commercial convention is there any mention of the subjects over which the two nations professedly went to war. Great Britain did not relinquish by the terms of these documents her maritime claims of right of search and impressment, of the rule of 1756, of fictitious blockades, and of the principles in her orders in council. These, though not mentioned in the treaties, were never subsequently enforced. It has been declared, therefore, that the maritime rights for which the United States contended were practically gained. The results of the

<sup>103</sup> Russell to Harris, Aug. 12, 1815; Russell Papers, MS. (copy), No. 1955.

<sup>104</sup> Hughes to Russell, Nov. 20, 1815; Russell Papers, MS., No. 1329.

war were manifest in a greater consolidation of the Union and a national spirit which was thereafter divided on questions not of foreign but of domestic policy, such as a national bank, the tariff, and internal improvements.<sup>105</sup>

<sup>105</sup> N. M. Butler, *The Effect of the War of 1812 upon the Consolidation of the Union*; Johns Hopkins University Studies in Historical and Political Science, Series V., No. 7. *Histoire des Etats Unis*, 278. Scheffer (Paris, 1825).

## CHAPTER X

### THE EXECUTION OF THE TREATY OF GHENT

The carrying out of the various provisions contained in the treaty of Ghent covered a period of many years and became the subject of numerous commissions and treaty arrangements. The usual forms found in a treaty of peace were speedily executed, but one provision contained in the article designed to establish the status quo ante bellum occasioned much dispute. This was the provision requiring the restoration of slaves. The United States maintained that by the terms of the treaty Great Britain was required to make restitution of or compensation for the slaves who, at the time of the ratification of the treaty, were in the possession of the British forces and within the limits of the United States.<sup>1</sup> The British Government held that the provisions of the treaty related only to the restoration of slaves and private property which were at the date of the ratification within places directed by the treaty to be restored; and that the restoration of slaves from the public vessels of Great Britain was

<sup>1</sup> Monroe to Baker, April 1, 1815; American State Papers, For. Rel., IV., 106-107.

not required.<sup>2</sup> Under this interpretation of the treaty the British Government refused to order their naval commanders to deliver up the slaves which had prior to the ratification of the treaty been received upon British war vessels.

Neither the United States nor Great Britain being willing to recede from its respective position, the President instructed the American minister in London to propose to the British Government that a reference of the disputed question be made to a friendly Power.<sup>3</sup> September 17, 1816, Minister Adams made such an offer in connection with a proposal to enter upon a negotiation for a treaty of commerce.<sup>4</sup> Several of the members of the British Cabinet being absent from London, Lord Castlereagh promised that the British Government would give consideration to the proposal at a later time.<sup>5</sup>

Richard Rush, when appointed to succeed Adams at the Court of St. James in 1817, had full power to conclude a commercial treaty. A few months later, May 22, 1818, Gallatin, the American minister to France,

<sup>2</sup> Castlereagh to Adams, April 10, 1816; American State Papers, For. Rel., IV., 125-126.

<sup>3</sup> Monroe to Adams, May 21, 1816; American State Papers, For. Rel., IV., 126.

<sup>4</sup> Adams to Castlereagh, Sept. 17, 1816; American State Papers, For. Rel., IV., 363.

<sup>5</sup> Castlereagh to Adams, Sept. 28, 1816; American State Papers, For. Rel., IV., 364.



was appointed with Rush to negotiate a treaty for the extension of the commercial provisions of the treaty of 1815 and for the adjustment of other differences between the two states.<sup>6</sup> One of the special subjects which they were expected to adjust was the claim of the United States for indemnity "to the owners of the slaves carried away from the United States by British officers, after the ratification of the peace of Ghent, and contrary to a stipulation in the first article of that treaty."<sup>7</sup>

The British Government accepted the proposal to refer the subject to the decision of some friendly Power. They proposed, however, that it first be referred to two commissioners, appointed in the same manner, and with like powers, as those provided for in the treaty of Ghent for the settlement of the boundary disputes. The American Government objected to the British proposition on the ground that the questions of indemnification for the slaves carried away and the settlement of boundaries were entirely different in principles and in character of evidence, and ought not to be referred to the same sort of commission.<sup>8</sup> The American representatives offered to refer the subject

<sup>6</sup> Commission of Rush and Gallatin; American State Papers, For. Rel., IV., 372.

<sup>7</sup> Adams to Gallatin, May 22, 1818; American State Papers, For. Rel., IV., 371-372.

<sup>8</sup> Adams to Gallatin and Rush, July 28, 1818; American State Papers, For. Rel., IV., 375-378.

to an independent commission to be composed of three members, but the British commissioners preferred to have reference to some friendly sovereign or state, as the United States had at first suggested. The American commissioners proposed that such reference be made to the Emperor of Russia. To this the British objected; and the article upon the subject of claims for restitution of slaves included in the treaty signed October 20, 1818, provided that the question as to whether the United States was entitled to compensation, in accordance with the American interpretation of the first article of the treaty of Ghent, should be left to the decision of "some friendly sovereign or state," and that both states should agree to abide by such decision as final and conclusive.<sup>9</sup> Later the two states agreed to refer the matter to the Russian Emperor, who, April 22, 1822, rendered his decision in favor of the United States. He gave as his decision that the United States was entitled to a just indemnification from Great Britain for all private property, including slaves, that had been carried away by the British forces from the places and territories the restitution of which was stipulated in the treaty. The Emperor further expressed the opinion that the United States was "entitled to consider as having been so carried away all such slaves as may have been transported from the above mentioned territories on board of the British vessels within the

<sup>9</sup> Malloy, *Treaties and Conventions*, I., 633.

waters of the said territories, and who, for this reason, have not been restored." The Emperor proffered himself as a mediator in the negotiations which would be necessary as a result of his decision.<sup>10</sup>

Under the mediation of Russia a convention was signed, July 12, 1822, and later ratified by the United States and Great Britain, which made provision for carrying out the intent of the Emperor's decision. In accordance with the arrangements of this instrument two commissioners and two arbitrators were appointed, one commissioner and one arbitrator by the President, with the advice and consent of the Senate, and one commissioner and one arbitrator by His Britannic Majesty. The treaty provided that these four commissioners and arbitrators should act as a board for examining all claims and should hold their sessions at Washington. In case of a disagreement they were empowered to draw the name of one of the two arbitrators, who should render a decision. Upon failure of the two Governments to agree upon the average value of a slave the mixed commission was to decide; and if they failed to agree, recourse was to be had to the arbitration of the minister or other agent of the mediating power accredited to the United States. The treaty was proclaimed by the President,<sup>11</sup> January 16,

<sup>10</sup> Award of Emperor of Russia, April 22, 1822; American State Papers, For. Rel., V., 220.

<sup>11</sup> Convention with Great Britain; American State Papers, For. Rel., V., 214-217.

1823. The two Governments appointed as commissioners Langdon Cheves and George Jackson respectively. These men entered upon their labors in August, 1823, but broke off four months later because of the refusal of the British commissioner to act with reference to a majority of the claims presented.

These claims continued to be a source of constant irritation between the two Governments until 1826, when the disagreement was finally settled by the treaty of November 13 of that year,<sup>12</sup> signed by Albert Gallatin for the United States and William Huskisson and Henry Addington for Great Britain. By the terms of this treaty Great Britain agreed to pay an indemnity of \$1,204,960 in satisfaction of all claims. This amount was to be paid in two installments. Upon the exchange of the ratifications of this convention, the joint commission appointed under the convention of July 12, 1822, became dissolved. With the payment of this indemnity by Great Britain the execution of article one of the treaty of Ghent became complete.

The exchange of prisoners as provided in the third article of the treaty also became a subject of controversy between the two states. The American Government interpreted the words of the article "shall be restored"<sup>13</sup> as implying the conveyance of prisoners to their own country by the state detaining them. Great

<sup>12</sup> Malloy, *Treaties and Conventions*, I., 641-643.

<sup>13</sup> *Ibid.*, 614.

Britain refused to accede to this interpretation, as the expenses sustained by her under such an arrangement would be far greater than those of the United States. The United States, it was pointed out, would be obliged to defray expenses only from the United States to Bermuda or Halifax, while Great Britain would be bound to pay the cost of conveyance of American prisoners from Great Britain to America and of her own prisoners from America to Great Britain.<sup>14</sup>

While the exchange of prisoners was being delayed on account of the differences in the construction of the treaty, a disturbance among the American prisoners at Dartmoor prison occurred. The British soldiers indiscriminately fired upon them and killed or wounded a large number. The British Government immediately proposed that an inquiry be made into the affair by commissioners, one to be appointed by each Government. This proposal was accepted, and Charles King and Francis Larpent were appointed by the United States and Great Britain respectively. These men proceeded at once to the investigation, and made their report April 26, eight days after their appointment. Their report, while criticizing the British authorities for excessively harsh and severe treatment of unarmed prisoners, failed to locate the responsibility for the

<sup>14</sup> Minute of conversation between Castlereagh and Clay and Gallatin, April 16, 1815; American State Papers, For. Rel., IV., 19.

affair or to suggest any means of redress or punishment.<sup>15</sup> The British Government, attaching a degree of blame to their soldiers, ordered the commanding officer to be censured for the conduct of his troops. Compensation was also offered to the widows and families of the sufferers.<sup>16</sup> The American Government felt that the report of the joint commission did not do sufficient justice to the American side of the affair, and it declined to accept the provision offered by Great Britain.<sup>17</sup> A proposal made by the British Government that the prisoners be transported at the joint expense of the two states was accepted. Under this arrangement the exchange speedily took place.

The tenth article of the treaty was concerned with the slave trade and read as follows: "Whereas the traffic in slaves is irreconcilable with the principles of humanity and justice, and whereas both His Majesty and the United States are desirous of continuing their efforts to promote its entire abolition, it is hereby agreed that both the contracting parties shall use their best endeavors to accomplish so desirable an object." No immediate action was taken by the United States

<sup>15</sup> Report of Larpent and King, April 26, 1815; American State Papers, For. Rel., IV., 21-23.

<sup>16</sup> Castlereagh to Clay and Gallatin, May 22, 1815; American State Papers, For. Rel., IV., 23.

<sup>17</sup> Monroe to Baker, Dec. 11, 1815; American State Papers, For. Rel., IV., 24.

to give effect to this article. Congress had by law in 1807 forbidden the importation of African slaves into the United States, but to some degree the slave trade still continued, in an indirect way, to be carried on.

On December 3, 1816, President Madison in his annual address to Congress recommended some amendment to the existing law to prevent the violations and evasions which were being made by those who, trading under foreign flags and with foreign ports, were secretly importing slaves into the United States.<sup>18</sup> The Committee on Foreign Relations, January 10, 1818, also reported the need of the adoption of more restrictive measures to put a stop to the further introduction of slaves into the United States. It was suggested by this committee that the law would be more effective if provision were to be made granting to the informer a part, or the whole, of the forfeited vessel or goods, instead of allowing the whole amount to revert to the United States.<sup>19</sup>

In 1818 American commissioners were engaged in negotiations with Great Britain relative to subjects omitted in the treaties of peace and of commerce of 1814 and 1815, and to the continuance of the commercial arrangements of the treaty of 1815, which would cease by limitation in 1819. The question of the slave trade came up in the course of the negotiation, and the

<sup>18</sup> American State Papers, For. Rel., IV., 96-98.

<sup>19</sup> *Ibid.*, 132-134.

British Government proposed that the United States accede to certain regulations which had been included in the treaties between Great Britain and the states of Spain, Portugal, and the Netherlands. This proposal being referred to the Government at Washington, the Secretary of State, John Quincy Adams, in reply set forth the principles under which the United States acted in its effort to abolish the slave trade. He objected to the British proposal upon the grounds of the constitutional provisions of the United States Government and the principles of public law. For the enforcement of the regulations the establishment of a mixed court would be necessary, whose judges would be amenable to impeachment for corruption and who would be qualified to decide upon the statutes of the United States without appeal. It was questionable, Adams said, whether Congress had the power to institute such a court, which would carry into execution the penal statutes of the United States beyond the territories of the country. Again, the proposal that officers of ships of war of either party be allowed to enter, search, capture, and carry into port for adjudication the merchant vessels of the other was repugnant to the views held by the United States upon the right of search. If the exercise of that power by foreign officers in time of war was obnoxious to the feeling of the country, much more would that be the case if the power were exercised in time of peace.



Another special objection raised by Adams to the proposed treaty arrangement upon the slave trade was the difficulty of dealing with the slaves which might be found on board the vessels condemned by the mixed courts. Being freemen, such negroes could not, but by their own consent, be employed as servants or laborers; but since the condition of the blacks in the United States was regulated by the municipal laws of the separate States, the Government of the United States could "neither guaranty their liberty in the States where they could only be received as slaves, nor control them in the States where they would be recognised as free."<sup>20</sup> The question of the slave trade was dropped from the negotiation and was not again renewed until 1824.

On May 15, 1820, Congress passed an act which declared slave trading to be piracy and to be punishable with death.<sup>21</sup> This was designed to enable the United States to join in the movement then being made to place the slave trade upon the same basis as piracy, both in its punishment and in its method of repression. The movement, however, was unsuccessful on account of the opposition to any arrangement that would recognize the right of the practice of visitation and search in time of peace. In 1823 the House of Representa-

<sup>20</sup> Adams to Gallatin and Rush, Nov. 2, 1818; American State Papers, For. Rel., IV., 399-401.

<sup>21</sup> Revised Statutes, III., 601.

tives adopted a resolution "that the President of the United States be requested to enter upon, and to prosecute from time to time, such negotiations with the several maritime powers of Europe and America as he may deem expedient for the effectual abolition of the African slave trade, and its ultimate denunciation as piracy, under the laws of nations, by the consent of the civilized world."<sup>22</sup> In pursuance of this resolution, instructions for carrying it into effect were given to the various American ministers in South America and Europe. Special instructions upon the subject were sent to Minister Rush in London, and full power was given him to conclude with the British Government a convention for the complete suppression of the slave trade. As a preliminary to the conclusion of the proposed convention, should it meet with the approval of Great Britain, would be the enactment of a statute by the British Parliament declaring the crime of African slave trading to be piracy by British law.<sup>23</sup> The American minister was instructed to propose to the British Government that the two Powers should endeavor to get the consent of the other nations to the general outlawry of this traffic as piracy, and that in the meantime the two states should duly authorize and instruct their armed vessels "to *capture* the slave-trading ves-

<sup>22</sup> Moore, Digest of International Law, II., 922-923.

<sup>23</sup> Adams to Everett, Aug. 8, 1823; American State Papers, For. Rel., V., 338.

sels which may assume the flag of *either*, and, if not of their own nation, to deliver over the captured slave trader to the officers or tribunals of his own country for trial and adjudication."<sup>24</sup>

The purpose on the part of the United States in attempting to make slave trading piracy was to bring it definitely within the pale of international law. As long as the offense was made only a domestic crime it was considered that the Constitution of the United States did not admit of the submission of the question to any foreign tribunal.

A negotiation upon the slave trade was reopened by Minister Rush with the British Government in January, 1824. Rush first proposed to the British commissioners the plan which Adams had outlined, namely, that slave trading be declared piracy and punished as such in the courts of each nation. The British commissioners preferred rather the plan which admitted of a reciprocal right of search. After several weeks of negotiation an agreement was reached which was a compromise of the American and British methods of dealing with the slave trade problem.<sup>25</sup> By the convention signed March 13, 1824, slave trading was recognized as piracy except that the captain and crew of a captured vessel were to be placed on trial

<sup>24</sup> Adams to Everett, Aug. 8, 1823; American State Papers, For. Rel., V., 338.

<sup>25</sup> Rush to Adams, Jan. 23, 1824; American State Papers, For. Rel., V., 315-316.

only in the courts of their own country. In order to carry out the purpose of the convention the cruisers of both countries were empowered under certain conditions and restrictions to visit and search each other's vessels "on the coast of Africa, of America, or of the West Indies."<sup>26</sup>

In order that the concession here made with respect to visit and search might not affect the general principle maintained by the United States, the American minister secured the inclusion of an article definitely limiting its application to the slave trade. This article was as follows: "The high contracting parties declare that the right which in the foregoing articles they have each reciprocally conceded of detaining, visiting, capturing, and delivering over for trial the merchant vessels of the other engaged in the African slave trade, is wholly and exclusively grounded on the consideration of their having made that traffic piracy by their respective laws; and further, that the reciprocal concession of the said right, as guarded, limited, and regulated by this convention, shall not be so construed as to authorize the detention or search of the merchant vessels of either nation by the officers of the Navy of the other, except vessels engaged or suspected of being engaged in the African slave-trade, or for any other

<sup>26</sup> A Convention for the Suppression of Piracy, committed by the African Slave Trade; American State Papers, For. Rel., V., 319-322.

purpose whatever than that of seizing and delivering up the persons and vessels concerned in that traffic for trial and adjudication by the tribunals and laws of their own country; nor be taken to affect in any other way the existing rights of either of the high contracting parties."<sup>27</sup>

When the convention was submitted to the Senate of the United States it was amended by that body so as to provide that either party should be free to denounce it at any time upon giving six months' notice. The Senate also amended the article permitting cruisers to visit and search vessels of the other party "on the coast of Africa, of America, or of the West Indies" by striking out the words "of America." It was voted to strike out all of article two and that part of article seven which provided that vessels or persons of either nation engaged in the slave trade, even though not under the flag of that nation, should be proceeded against in the same manner as any other vessel or person might be.<sup>28</sup>

When the convention, as amended by the Senate, was reported to the British Government, it was refused, the chief objection being made to the striking

<sup>27</sup> A Convention for the Suppression of Piracy, committed by the African Slave Trade; American State Papers, For. Rel., V., 319-322.

<sup>28</sup> American State Papers, For. Rel., V., 361-362.

out of the words "of America."<sup>29</sup> In fact, the British chargé d'affaires at Washington, Addington, was given authority to conclude and sign a treaty verbatim, the same as the returned treaty would be with all the alterations introduced into it by the Senate, excepting only the proposed omission of the words "of America."<sup>30</sup> Addington made this proposal to the Secretary of State, who replied that the whole subject was to be referred by the President to Congress.<sup>31</sup>

President Monroe in his annual message to Congress December 7, 1824, submitted all the documents relating to the negotiations upon the slave trade in order to secure the sentiments of Congress upon the subject.<sup>32</sup> The committee in the House of Representatives to which that portion of the President's message dealing with the suppression of the slave trade was referred, made to the House an exhaustive report which they concluded with the statement that they would not consider a negotiation to be dissolved which had approached so near a consummation, nor a convention as absolutely void which had been executed by one

<sup>29</sup> Rush to Adams, Aug. 9, 1824; American State Papers, For. Rel., V., 364.

<sup>30</sup> Canning to Rush, Aug. 27, 1824; American State Papers, For. Rel., V., 364-365.

<sup>31</sup> Adams to Addington, Dec. 4, 1824; American State Papers, For. Rel., V., 367-368.

<sup>32</sup> Richardson, Messages and Papers of the Presidents, II, 250.

party and which the United States, having first tendered, should be the last to reject.<sup>33</sup> This shows that even then the opposition to slavery was much stronger in the House than in the Senate. This fact is further disclosed by the discussion in the House at this time over a bill for the colonizing of free people of color of the United States.

Addington, the British chargé, March 2, 1825, addressed Secretary Adams requesting that he be informed as to the intention of the President with respect to the proposition which the British Government had previously offered. The reply to this request was not made until after Clay became Secretary of State under Adams. April 6, 1825, Secretary Clay addressed a long note to the British representative in which he stated that, owing to the persistent opposition of the Senate to a convention of the character proposed, it would be inexpedient longer to continue the negotiation respecting the slave convention with any hope of a satisfactory conclusion.<sup>34</sup>

In 1833 and 1834 the Governments of France and Great Britain endeavored to secure the adherence of the United States to a convention made between those Powers November 30, 1831, and a supplementary arrangement of March 22, 1833, for the suppression

<sup>33</sup> American State Papers, For. Rel., V., 629-632.

<sup>34</sup> Addington to Adams, March 2, 1825; American State Papers, For. Rel., V., 782. Clay to Addington, April 6, 1825; American State Papers, For. Rel., V., 783-784.

of the African slave trade. The American Government held that the convention and supplement were open to the same objections as had previously been "deemed insuperable," and that the statement of the British minister in his note of December 25, 1833, "that in the act of accession it would be necessary 'that the right of search should be extended to the coasts of the United States'" made it more imperative for the President to decline the invitation.<sup>35</sup>

In December, 1841, the representatives of England, France, Prussia, Russia, and Austria signed at London a treaty for the suppression of the slave trade. The cruisers of each nation were authorized to detain and search any vessels of the others that should "on reasonable grounds be suspected of being engaged in the traffic in slaves." General Cass, then American minister in Paris, published a pamphlet in which he deplored the treaty on the ground that it tended toward the re-establishment of the practice of visitation and search. In February, 1842, Cass sent a communication to M. Guizot, the Minister of Foreign Affairs, protesting against the quintuple treaty. The French Government in consequence refused to ratify the treaty, but later, in 1845, agreed to support an

<sup>35</sup> Mr. McLane, Secretary of State, to Mr. Vaughan, Brit. min., March 24, 1834; MS. Notes to For. Leg., V., 191. Quoted in Moore, Digest of International Law, II., 927.



effective fleet on the African coast as the United States had done under the Webster-Ashburton treaty.<sup>36</sup>

By the eighth article of this treaty, signed August 9, 1842, Great Britain and the United States agreed that each would maintain on the coast of Africa a sufficient number of ships "to enforce, separately and respectively, the laws, rights, and obligations of each of the two countries for the suppression of the slave-trade." The two squadrons were to be independent of each other, but to act in "concert and coöperation" as circumstances might arise. By the ninth article of the same treaty the two powers agreed to unite in making remonstrances to those states offering a market for slaves and to urge upon such states "the propriety and duty of closing such markets effectually, at once and forever."<sup>37</sup> President Tyler when communicating this treaty to the Senate said: "The treaty which I now submit to you proposes no alteration, mitigation, or modification of the rules of the law of nations."<sup>38</sup> Cass criticized that portion of the treaty which dealt with the question of the slave trade, not on the grounds of its admission of a right of search, but because the abandonment of that claim was not made "a previous

<sup>36</sup> Moore, *Digest of International Law*, II., 928.

<sup>37</sup> Malloy, *Treaties and Conventions*, I., 655.

<sup>38</sup> Webster's Works, VI., 353. Quoted in Moore, *Digest of International Law*, II., 931. Richardson, *Messages and Papers of the Presidents*, IV., 168.

condition to any conventional arrangement upon the general subject." Webster answered the criticism of Cass as follows: "Inasmuch as the treaty gives no color or pretext whatever to any right of searching our ships, a declaration against such a right would have been no more suitable to this treaty than a declaration against the right of sacking our towns in time of peace, or any other outrage."<sup>39</sup>

When Cass himself became Secretary of State the old question of visitation and search arose again. In 1858 in a note to Lord Napier, British Minister at Washington, relative to measures for the suppression of the slave trade, Cass referred to a statement made by the British minister "to the effect that the use of the American flag by a vessel did 'not protect the slaver from visit, but exonerates her from search.'" This distinction between "the right of visitation and the right of search, between an entry for the purpose of examining into the national character of a vessel and an entry for the purpose of examining into the objects of her voyage,' could not, said Mr. Cass, 'be justly maintained upon any recognized principle of the law of nations. . . . The United States deny the right of the cruisers of any other power whatever, for any purpose whatever, to enter their vessels by force in time of peace. . . . No change of name can change

<sup>39</sup> Moore, Digest of International Law, II., 931.

the illegal character of the assumption. Search, or visit, it is equally an assault upon the independence of nations.’”<sup>40</sup>

As a result of certain reports concerning orders that were alleged to have been given to British and French cruisers to visit and search vessels as suspected slavers in the Gulf of Mexico, the United States Senate, June 16, 1858, adopted a resolution declaring “that American vessels on the high seas, in time of peace, bearing the American flag, remain under the jurisdiction of the country to which they belong, and therefore any visitation, molestation, or detention of such vessels by force, or by the exhibition of force, on the part of a foreign power, is in derogation of the sovereignty of the United States.”<sup>41</sup> When Cass transmitted this resolution to the American minister at London he re-emphasized the American position in these rather threatening words: “The immunity of their merchant vessels upon the high seas will be steadily maintained by the United States under all circumstances, as an attribute of their sovereignty never to be abandoned, whatever sacrifices its protection may require.”<sup>42</sup>

<sup>40</sup> Cass to Lord Napier, April 10, 1858; S. Ex. Doc. 49, 35th Cong., 1st sess., 42, 47, 48. Quoted in Moore, *Digest of International Law*, II., 942-943.

<sup>41</sup> *Foreign Relations*, 1874, 963. Quoted in Moore, *Digest of International Law*, II., 946.

<sup>42</sup> Cass to Dallas, June 17, 1858; H. Ex. Doc. 7, 36 Cong., 2d sess., 97. Quoted in Moore, *Digest of International Law*, II., 946.

Notwithstanding the language of the Senate resolution, four years later, under the administration of Lincoln and Seward, there was concluded a treaty between the United States and Great Britain by the terms of which the two states agreed to allow their naval vessels to visit such merchant vessels of the two nations as should, upon reasonable grounds, be suspected of conducting a traffic in slaves, or of having been fitted out for such a purpose. Any vessel of this character was to be detained and sent in for trial. It is also to be noted that in this treaty the United States consented to the establishment of mixed courts, which in the earlier negotiations had been considered highly objectionable. These mixed courts were, however, abolished in 1807, and the courts of the respective nations took their place. By a supplemental article, concluded February 17, 1863,<sup>43</sup> the reciprocal right of search and detention was permitted within thirty leagues of the coast of Cuba, which was practically upon the American coast. This was agreed to in spite of the vigorous objection to such extension made by the United States throughout a long period of years.

With this treaty, the execution of the article in the treaty of Ghent with respect to the slave trade may be regarded as complete. The abolition of slavery in the United States and the elimination of any possible market in America dealt its final blow. Since then

<sup>43</sup> Malloy, *Treaties and Conventions*, I., 674-679, 687-688.

the United States has been interested in the effort to suppress the slave trade in Africa, and to this end it became a party to the general act signed at Brussels July 2, 1890, which provided comprehensive regulations for the suppression of the African slave trade.

The most important arrangements of the treaty of Ghent were those in relation to the settlement of the boundary disputes. The treaty has frequently been called a "treaty of boundaries." Five of the eleven articles, covering more than two thirds of the text, were concerned with provisions for the establishment and operation of boundary commissions. Four joint commissions were thus provided: the first to decide upon the ownership of the islands in the Bay of Passamaquoddy; the second to arbitrate with respect to the Maine highlands and the northwesternmost source of the Connecticut River and the location of the 45th parallel; the third to settle upon the boundary through the St. Lawrence and the lakes as far as the inlet of Lake Huron and to arrange for the division of the islands in the said waters; the fourth to determine the boundary westward from the inlet of Lake Huron to the Lake of the Woods and the ownership of the islands in the said waters.

The first of these commissions, to which John Holmes, American, and Thomas Barclay, British, were appointed, was successful in its efforts. Agents for the two states presented the respective claims of each

before the commissioners. The claims advanced by the United States were that the islands in the Bay of Passamaquoddy were within territory bounded by the treaty of 1783 and included in the twenty leagues of shore provision; that all islands within twenty leagues of the shores of the United States had been confirmed to it; and lastly, that the said islands were not within the meaning of any exception made in the treaty of 1783. It was further claimed by the American agent that in following the ship channel all islands would be found to be on the American side, with the exception of Deer Island. It was held that by the American grants and charters it could be shown that the islands in question were within the limits of Massachusetts and never had been within those of Nova Scotia. The arguments of the American agent covered over five hundred pages, and the arguments in the rejoinder on the part of the British agent were contained in a memorial<sup>44</sup> of four hundred pages.

The British memorial claimed, first, that the islands never were, nor were intended to form, a part of the twelve contemplated provinces of New England; second, that they never were nor could be included in the territory granted to the Duke of York in 1664, nor the territory lying between Sagadahock and Nova Scotia mentioned in the charter of the Province of

<sup>44</sup> MS., Dept. of State, Bureau of Rolls and Library, Execution of "The Fourth Article of the Treaty of Ghent."

Massachusetts Bay, 1691; third, that the islands were by the express provisions of the charter of 1691 annexed to that integral part of the Province of Massachusetts Bay which before had formed the province of Nova Scotia under the grant of 1621; fourth, that these islands thus annexed were precisely the same islands that were within the limits designated in the grant of 1621; fifth, that Nova Scotia, under the charter of 1691, was re-ceded to the Crown and became a separate province and so remained until the treaty of peace, 1783; sixth, that the islands never belonged to Massachusetts except as a part of the Province of Nova Scotia; seventh, that the river St. Croix designated in the grant of the Province of Nova Scotia was the river intended under that name in the treaty of 1783; and eighth, that all the islands in question were excepted by provisions of the treaty of 1783 from coming within the boundary described by the treaty.<sup>45</sup>

The commissioners rendered their decision November 24, 1817. They decided that Moose Island, Dudley Island, and Frederick Island in the Bay of Passamaquoddy belonged to the United States and that all of the other islands, including the Island of Grand Menan, belonged to Great Britain.<sup>46</sup> No steps were taken

<sup>45</sup> MS., Bureau of Rolls and Library, Execution of "The Fourth Article of the Treaty of Ghent."

<sup>46</sup> Malloy, *Treaties and Conventions*, I., 619.

to mark this boundary until 1891. At that time negotiations were entered upon which resulted in a treaty concluded between the United States and Great Britain, July 22, 1892, which provided for a joint commission of two, "to determine upon a method of more accurately marking the boundary line between the two countries in the waters of Passamaquoddy Bay in front of and adjacent to Eastport, in the State of Maine, and to place buoys, or fix such other boundary marks as they may determine to be necessary," each country to defray one half of the cost.<sup>47</sup>

Cornelius P. Van Ness for the United States and Thomas Barclay for Great Britain were appointed commissioners under the provisions of the fifth article of the treaty "to determine and mark the boundary from the source of the St. Croix to the river St. Lawrence, on the 45th parallel." The commissioners met at St. Andrews, September 22, 1816, and after a two days' session adjourned, the season being too far advanced for the necessary surveying to be done. The next meeting was to be held in Boston on the 4th of the following June.<sup>48</sup>

The commissioners met at the time and place agreed upon, and drew up a set of instructions which they presented to the surveyors of the respective governments. On June 14 the commissioners adjourned to

<sup>47</sup> Moore, *International Arbitrations*, I., 63-64.

<sup>48</sup> *Ibid.*, 73.



meet in New York the 5th of May the following year, unless in the meantime they should agree upon some other place and time to come together. The next meeting was by agreement held May 15, 1818, at Burlington, Vermont, instead of in New York, since it became necessary to be at St. Regis about the first of June in order to begin the survey of the line between the Iroquois and Connecticut Rivers. The commissioners subsequently held meetings also at Montreal and St. Regis. On June 12 they adjourned to meet in New York the 30th of the following November. Before that time arrived it became evident that the surveyors and astronomers employed in the survey would not be ready to report, and so the conference of the commissioners was postponed until May 3, 1819, in New York. When that day came the surveys were still incomplete, and the commissioners moved an adjournment to Boston on the first Monday in May, 1820. This date was later changed to May 11. Following the meeting in Boston the commissioners met next in New York, November 23, when it was decided that no more surveys were necessary, and the agents were ordered to attend the next meeting and present their arguments. The board adjourned to meet in New York May 14, 1821, in order to give the agents time to make the necessary preparation. On this last date the commissioners came together to hear the arguments.<sup>49</sup>

<sup>49</sup> Moore, *International Arbitrations*, I., 74-76.

The most difficult question that called for decision in connection with the boundary was as to the location of the "highlands" mentioned in the treaty of 1783, which were said to divide the rivers that emptied into the St. Lawrence from those that flowed into the Atlantic Ocean. The treaty of 1783 required the line to be run upon such "highlands." The British Government contended that the boundary line should be run upon the highlands to the south of St. Johns; but that line of highlands turned no water into the St. Lawrence. The United States maintained that the line should be run on the highlands to the north of the river St. John, since that was the only watershed that turned its northern waters into the St. Lawrence and its southern waters into the Atlantic Ocean, although through the Bay of Fundy. Failure to agree upon what should be taken as the "highlands" made it impossible to agree upon the "northwest angle of Nova Scotia," for that, by the treaty of 1783, was said to be at the point where "a line drawn due north from the source of the St. Croix River" strikes the "highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean." When all the evidence had been presented by the agents of the two states, the commissioners found themselves unable to agree upon the location of the northwesternmost head of the Connecticut and the location of the forty-fifth parallel of

north latitude, as well as that of the northwest angle of Nova Scotia, which were definitive points of boundary mentioned in the treaty of 1783. The commissioners, failing to agree, filed their dissenting opinions with their respective Governments, and at the same time presented lengthy reports upon the work of the commission.<sup>50</sup>

Since the joint commission failed to agree upon the northeastern boundary question, it became necessary, in accordance with the provision in the treaty of Ghent, to refer the "reports of the said commissioners to some friendly sovereign or state." There was some delay in carrying out this provision, during which time the district of Maine, with the consent of Massachusetts, was admitted to the Union.<sup>51</sup>

In 1826 Albert Gallatin, commissioned as Minister Plenipotentiary from the United States to Great Britain, was empowered to adjust, as far as possible, the various differences between the two countries. In regard to the northeastern boundary he was instructed, if possible, to arrange a direct negotiation upon the subject at Washington; but, should he fail in that, he was to agree to submit the matter to arbitration. After a long and tiresome negotiation Gallatin, in the nineteenth conference which he had with the British representatives, secured the acceptance of a convention

<sup>50</sup> Moore, *International Arbitrations*, I., 78-82.

<sup>51</sup> *Ibid.*, 85.

which he had drafted. This convention, signed September 29, 1827, made it obligatory on the part of the two states to choose some friendly sovereign or state as arbiter, and to use their best endeavors to obtain a decision, if practicable, within two years after the arbiter should have signified his consent to act as such. The treaty provided that the decision of the arbiter should be taken as final and conclusive and should be carried, "without reserve, into immediate effect."<sup>52</sup>

It was agreed to depart from the procedure prescribed by the treaty of Ghent, which stipulated that the reports of the commissioners, in case of disagreement, should be presented to the arbitrator, and instead to substitute for the reports of the commissioners new and separate statements by each of the contracting parties. This change was considered necessary inasmuch as the reports of the commissioners and the documents connected therewith were "so voluminous and complicated as to render it improbable that any sovereign or state would be willing or able to undertake the office of investigating and arbitrating upon them." The time within which the statements of the contracting parties should be presented to the arbitrator was limited to two years. The ratifications of this convention were exchanged at London, April 2, 1828, and soon thereafter the King of the Netherlands was chosen to act as arbitrator.<sup>53</sup>

<sup>52</sup> Malloy, *Treaties and Conventions*, I., 646-649.

<sup>53</sup> Moore, *International Arbitrations*, I., 88-90.

The statements of the case were duly submitted to the arbitrator by the representatives of the two states. Albert Gallatin prepared the American statement, a most able and exhaustive report, upon which he spent two years. The case was treated by both sides under the same topics that were the points of difference in the joint commission originally appointed. These subjects, as mentioned before, were: (1) the northwest angle of Nova Scotia and the "highlands"; (2) the northwesternmost head of the Connecticut River; (3) the boundary line from the Connecticut River along the forty-fifth parallel of north latitude to the river St. Lawrence.

The King of the Netherlands gave his award January 10, 1831. The arbitrator failed to adjudicate the differences presented to him, and instead rendered his decision in the form of an arbitrary compromise boundary. This award gave to the United States about eight thousand square miles of the territory in dispute and to Great Britain about four thousand square miles. Two days after the announcement of the award, Prebel, the American minister at The Hague, addressed a note to the Minister of Foreign Affairs protesting against the award, on the ground that the arbitrator had exceeded his powers. The British Government recognized that the award was recommendatory in character rather than mandatory, but acquiesced in the decision. At the same time the British minister

at Washington was authorized to give the United States to understand privately that Great Britain would not consider a formal acceptance of the award by the two Governments as precluding a modification of the line by mutual agreement. President Jackson was reluctant to accept the decision, and, since it was unsatisfactory to both Maine and Massachusetts, he submitted the question to the Senate, which by a large majority voted that the award was not obligatory and recommended a new negotiation with Great Britain.<sup>54</sup>

The United States attempted to secure an agreement from Maine by which the American Government might have a free hand in dealing with the boundary question as it affected the territory of that State. The State of Maine refused to accede to such arrangement. Negotiations were continued with the British Government over the boundary dispute during the year following the award of the King of the Netherlands, but no agreement was reached. In 1838-39 occurred what was known as the Aroostook war, which was a conflict between New Brunswick and Maine growing out of the unsettled boundary dispute. War became imminent, and General Winfield Scott was sent by the United States Government to mediate. He persuaded the authorities of Maine and New Brunswick to remove their forces from the disputed territory while

<sup>54</sup> Moore, *International Arbitrations*, I., 119-138.

negotiations should be carried on looking to a settlement of the boundary.<sup>55</sup>

Correspondence between the United States and Great Britain was renewed, which, after three years, resulted in a settlement of the dispute by the signing of the Webster-Ashburton treaty, August 9, 1842. This agreement was reached wholly by diplomatic negotiation in which both parties evinced a willingness to compromise rather than to prolong the dispute further. The boundary line was, like that in the award of the King of the Netherlands, a compromise. In fact, by the treaty of 1842 the United States was given less of the disputed territory than was assigned by the arbitrator's award. By it New Hampshire, Vermont, and New York gained certain territory formerly supposed to belong to them, but which was, actually, above the forty-fifth parallel. As a compensation to the States of Maine and Massachusetts, which suffered by the arrangement, a sum of three hundred thousand dollars was paid by the United States Government. Maine was also pacified by a provision in the treaty which granted to her the privilege of transporting the lumber and agricultural products of the State upon the waters of the St. John. The boundary, as thus agreed upon, was later traced and marked as follows: from the source of the St. Croix to the intersection of the St. John; thence to the mouth of the St. Francis; thence to

<sup>55</sup> Moore, *International Arbitrations*, I., 145-146.

the outlet of Lake Pohenagamook; thence to the Northwest Branch of the St. John; thence to the parallel of latitude  $46^{\circ} 25'$  on the Southwest Branch; thence to the source of the Southwest Branch of the St. John; thence to the source of Halls Stream; thence to the intersection of the line of Valentine and Collins; thence to the St. Lawrence near St. Regis along the line of Valentine and Collins.<sup>56</sup>

The third boundary commission provided for by the treaty of Ghent was to determine the northern boundary through the St. Lawrence River and Lakes Ontario, Erie, and Huron. The commissioners appointed for this undertaking were Peter B. Porter for the United States and John Ogilvy for Great Britain. The first preliminary meeting of the joint commission was held at Albany, New York, November 18, 1816. Meetings were held during the next three years at St. Regis, Point Amity, Hamilton, and Ontario. September 28, 1819, the British commissioner died. His successor was Anthony Barclay, son of Thomas Barclay, who had been the British commissioner on the northeastern boundary commission. Barclay did not qualify until January 3, 1820. Not until November of the following year were maps of the surveys ready. Several meetings were then held in New York City. Sub-

<sup>56</sup> Report of the joint commission of boundary appointed under the treaty of Washington of Aug. 9, 1842; Richardson, *Messages and Papers of the Presidents*, IV., 171.



sequently the commissioners met in Philadelphia and at Utica, New York. At the last place on June 18, 1822, they reached an agreement. By this agreement the boundary was arranged to follow in the main the channel throughout the water communications. The islands lying in the rivers, lakes, and water communications between the boundary line and the adjacent shores of Upper Canada were adjudged to belong to Great Britain, and all islands between the said boundary line and the adjacent shores of the United States were declared to belong to the United States.<sup>57</sup>

The treaty of Ghent stipulated that the portion of the northern boundary from Lake Huron to the most northwestern point of the Lake of the Woods should be referred to the same commissioners who might be chosen to act in settlement of the boundary through the river St. Lawrence and Lakes Ontario, Erie, and Huron. As soon, therefore, as Porter and Barclay had completed their work in connection with the boundary mentioned, they proceeded upon their second task. They issued instructions to the surveyors to ascertain the position of Long Lake, or the chain of waters referred to by that name in the treaty of 1783, and, if those waters did not communicate with Lake Superior, to discover what rivers or bodies of water divided by a height of land and emptying, one into

<sup>57</sup> Malloy, *Treaties and Conventions*, I., 620-623.

Lake Superior and the other into the Lake of the Woods, corresponded most nearly to the line described in the treaty. Partial surveys were made during the summers of 1822 and 1823, and reports were made to the joint commission in February, 1824, at a meeting at Albany. The following summer the surveys were completed, and were reported at a meeting of the commissioners in Montreal in October. Upon the results of these surveys and the evidence presented by the agents the commissioners endeavored to reach an agreement, but upon two points they found this impossible. The first of these differences was in connection with the claims of the respective Governments relative to certain islands in St. Mary's River, particularly the island of St. George. The second difference was in relation to the running of the boundary from a point near Isle Royal in Lake Superior to the Chaudiere Falls in Lac La Pluie, which is between Lake Superior and the Lake of the Woods. On the remainder of the boundary line from Lac La Pluie to the northwesternmost head of the Lake of the Woods the commission was in agreement.<sup>58</sup> The commissioners made separate reports to their respective Governments on the points of agreement and disagreement. Pro-

<sup>58</sup> MS., Bureau of Rolls and Library, Journal of Proceedings of Commissioners appointed to carry into effect the sixth and seventh articles of the Treaty of Ghent; Moore, International Arbitrations, I., 171 et seq.

positions of a compromise nature which each commissioner had presented were also included in the reports, with a view to a possible arrangement without reference to a third party. These reports were made in the fall of 1827, and for ten years thereafter no action was taken, either to submit the questions to arbitration, or to renew the negotiation. During this period the northeastern boundary question was the important issue.

When, in 1842, Webster and Ashburton entered upon their negotiation to settle the various differences existing between the two countries, the boundary from Lake Huron to the northwesternmost point of the Lake of the Woods was included in the questions to be settled. An agreement was quickly reached by the two negotiators by which they adopted so much of the boundary as had been agreed upon by the joint commission in 1827. With reference to the remainder of the line they arranged a compromise, by which the difference over the islands in St. Mary's River was decided in favor of the United States, while the second point of difference, with regard to the route to be followed from a point near Isle Royal in Lake Superior to Chaudiere Falls in Lac La Pluie, was settled, in the main, in accordance with the British claim. The line as agreed upon northward from Isle Royal ran from a point north of Isle Royal for one hundred yards to the north and east of Isle Chapeau; thence southwesterly

to the mouth of the Pigeon River; thence along the line of the Grand Portage by land and water to Lac La Pluie. The treaty provided that all the water communications embraced in the boundary line and all the various channels in the St. Lawrence and Detroit Rivers should be free and open to the citizens of both countries.<sup>59</sup>

The Webster-Ashburton treaty completed the last of the boundary arrangements provided in the treaty of Ghent, and with this settlement all the provisions of that treaty were completely executed, after a lapse of nearly thirty years.

<sup>59</sup> Malloy, *Treaties and Conventions*, I., 652.

## CHAPTER XI

### SETTLEMENT OF CONTROVERTED QUESTIONS OMITTED IN THE TREATY OF GHENT

The statement has often been made that the war of 1812 secured none of the objects for which it was fought. This is true if one looks to the treaty of peace alone to discover results, for that treaty contains not a word as to the settlement of the avowed causes of the war. The commissioners of peace, in order to secure what was most essential, that is, the restoration of the blessings of peace, left to the adjustment of time the questions upon which agreement then was impossible. Has time justified their action? Let us consider the subsequent arrangements upon the leading questions in dispute in 1814.

Impressment, which was the principal cause of the war, occupied, as has been seen, comparatively little time in the negotiations at Ghent. It was brought forward in the first conference of the American and British commissioners, but the discussions, soon turning upon Indian territory, disarmament on the lakes, and boundaries, and later upon the fisheries and navigation of the Mississippi, left the more abstract ques-

tions in abeyance. However, in the projet of the treaty proposed by the American commissioners there was an article providing for the abolition of impressment, but this was rejected by the British commissioners. The American commissioners consented to waive the article, with the understanding that the omission of a specific proposition in the treaty of peace on the subject of impressment should not impair the right of either Power.<sup>1</sup> The treaty, therefore, was signed with no provision upon this subject. The American commissioners believed that impressment would receive a more favorable consideration after the war was over, when the two countries came to arrange other questions not included in the treaty of peace.

Eight days after the ratification of the treaty of Ghent, President Madison sent a message to Congress recommending the passage of a law to permit the employment upon American vessels<sup>2</sup> of only native American citizens and persons already naturalized. The Committee on Foreign Relations, to whom this message was referred, reported favorably upon the recommendation of the President, but advised that the question be postponed until the next session of Congress.<sup>3</sup> Such a law was never passed, the general paci-

<sup>1</sup> American to British Commissioners, Nov. 30, 1814; American State Papers, For. Rel., III., 741.

<sup>2</sup> Richardson, Messages and Papers of the Presidents, I., 555.

<sup>3</sup> Annals of Congress, 13th Cong., 3d sess., 1255.

fication of Europe obviating the necessity for such action.

When entering upon the negotiations for a commercial treaty with Great Britain the American commissioners stated to the British that they were instructed by their Government upon two general subjects which might properly be discussed: commercial regulations applicable to a state of peace as well as of war, and the rights and duties of states when one was at war and the other at peace. In connection with the second subject the American commissioners mentioned impressment as being the most important question. They called the attention of the British commissioners to the law that had been passed by Congress<sup>4</sup> March 3, 1813, which, after the war, excluded the employment of foreign seamen on American vessels. They also mentioned the recommendation of the President in respect to the passage of a more rigid law on the subject. It was pointed out that such action by the American Government, should it result in an absolute exclusion of British seamen, would remove all ground for the claim of impressment; and that this method would be more satisfactory to Great Britain inasmuch as it would operate upon every American vessel, and not merely upon those with which a British warship might come in contact. The American commissioners contented themselves with this explanation, and did not

<sup>4</sup> United States Statutes at Large, II., 809-810.

insist upon the inclusion of an article upon impressment in the commercial treaty which was signed July 3, 1815. All the more disputable questions which endangered the success of a commercial treaty were eliminated and reserved for future negotiation. Jefferson, in writing to Madison March 23, 1815, had advised a convention upon impressment apart from the commercial treaty. If included in such a treaty, he thought, it might be at the price of injurious concessions.<sup>5</sup>

After the signing of the commercial treaty, Adams, American minister at London, was engaged in a protracted correspondence with the British Government upon the questions of the restoration of slaves, the abolition of the slave trade, and the reciprocal rights to the Newfoundland fisheries and to the navigation of the Mississippi. On January 25, 1816, Adams, proposing to the British Secretary of Foreign Affairs that a negotiation be entered upon to secure an additional convention, was asked upon what subjects he wished to treat. He replied that impressment was the first and most important question. When the American minister adverted to the President's policy of confining the navigation of American vessels to American seamen, and the solicitude of the President that such a law might lead to a total discontinuance of the prac-

<sup>5</sup> Jefferson to Madison, March 23, 1815; Writings of Jefferson, IX, 511-514.



tice of impressment, the British Foreign Secretary, Lord Castlereagh, intimated that if such a law were successful there would be no need of any arrangement upon impressment. He remarked that as the inconvenience did not exist during peace it might be doubtful whether it was the most seasonable time for a discussion of a subject upon which such a different and opposite view in the matter of principle was entertained by the two Governments. Adams urged the point that a time of peace was more favorable for such a discussion, but Castlereagh still disagreed. He gave Adams to understand that there was still strong feeling in Great Britain upon the subject, and that the Government would not dare to incur the responsibility of any concession in connection with it. It was more expedient, said he, to wait and see the result of the American policy for "encouraging their own native seamen," and whether this would remove the need for Great Britain to exercise the practice of impressment to protect herself from the loss of her own seamen. As a result of this conference Adams reported that there appeared to be "no prospect that, under the present ministry, any conventional arrangement for renouncing the practice of impressment will be attainable."<sup>6</sup>

A few months later Adams was informed by Castle-

<sup>6</sup> Adams to Monroe, Jan. 31, 1816; American State Papers, For. Rel., IV., 360.

reagh that the British Government were adverse to treating with respect to any of the conflicting claims of neutral and belligerent rights, but would be willing to entertain proposals in relation to impressment.<sup>7</sup>

September 17, 1816, Adams renewed the proposal for the negotiation of a treaty of commerce, specifying the several objects which the American Government considered desirable to be included in a further convention. Upon the subject of impressment he proposed that both states should stipulate that they would not employ in their naval or merchant service any native citizens or subjects of the other state, with the exception of those already naturalized. This proposition, it was stated, was made, not to secure any advantage to the United States, but as a means for Great Britain to reserve to herself the services of all her own native seamen, and to remove forever the necessity of resorting to means of force, either by her naval officers in taking men from the vessels of the United States, or by the United States in resisting the renewal of that practice in the event of any future maritime war in which it might be neutral.<sup>8</sup> Not until the following March did Adams receive a reply to his proposal, and then Castlereagh expressed a

<sup>7</sup> Adams to Monroe, Aug. 24, 1816; American State Papers, For. Rel., IV., 361.

<sup>8</sup> Adams to Castlereagh, Sept. 17, 1816; American State Papers, For. Rel., IV., 363.

willingness to treat only in a limited way with respect to commercial arrangements.

When Rush was sent to Great Britain to succeed Adams in 1817, he was given full power to negotiate and sign a commercial treaty which might deal with neutral rights as well as commercial privileges. For instructions upon the questions embraced in neutral rights he was referred to the original instructions given to the peace plenipotentiaries.<sup>9</sup>

As the time approached when the commercial treaty of 1815 would expire, no agreement having been reached to extend its provisions, the importance of practical commercial arrangements again transcended the more academic questions of neutral rights. Adams in a letter to Rush, May 30, 1818, wrote: "It is not our desire to embarrass the proposed commercial negotiation with any of the questions of maritime regulations adapted to a state of warfare. We do not wish that blockade, contraband trade with enemies or their colonies, or even impressment, should be drawn into the discussion, unless such a wish should be manifested on the British side."<sup>10</sup>

Before this letter reached him, Rush had already made two proposals to the British Government upon

<sup>9</sup> Adams to Rush, Nov. 6, 1817; American State Papers, For. Rel., IV., 370.

<sup>10</sup> Adams to Rush, May 30, 1818; American State Papers, For. Rel., IV., 372-373.

impressment. On April 18 he proposed the reciprocal restriction of the naturalization of sailors in return for a definite stipulation against the practice of impressment; and again, on June 20, he attempted to secure a renunciation of the practice by proposing that each nation should exclude altogether the seamen of the other from its service, the rule to apply to public as well as merchant vessels. The British Government at first rejected both proposals, but later, August 13, Castlereagh intimated to Rush that the second proposition might, with two modifications, be accepted, although, he said, he had not consulted the other members of the Cabinet upon the subject. The modifications which he proposed were, first, that either party might withdraw from the agreement after three or six months' notice; the second, that if a British officer should enter an American vessel for the purposes admitted to be lawful, and should discover there a seaman whom he suspected to be English, he should be allowed to make a record or *procès verbal* of the fact, which might be brought to the attention of the American Government, though the officer himself would not be allowed to take the man.<sup>11</sup>

This proposition being referred to Washington, President Monroe laid it before his Cabinet for their

<sup>11</sup> Moore, *Digest of International Law*, II., 997. Rush to Secretary of State, Aug. 15, 1818; *American State Papers*, For. Rel., IV., 379.

opinions upon the modifications proposed by Lord Castlereagh. Two members of the Cabinet, Crawford and Wirt, were inclined to accede, while the two others, Adams and Calhoun, were opposed to the proposal. The members of the Cabinet being evenly divided upon the subject, President Monroe took a midway course. He decided to reject the second modification, "because it implied that the boarding officer should have the power of mustering the crew of an American vessel and passing them individually under his inspection"; and also, "because it implied a suspicion that we should not faithfully and sincerely carry our own laws into execution." He had less objection to the first modification, for he believed that if the British Government once agreed not to impress seamen from American vessels, even though it should be for a short period, they would never be likely to resort to the practice again.<sup>12</sup> The President, however, was willing to consent to the first modification only on the condition that a provision be made that the notification of the withdrawal of the agreement should not take place until after the treaty had been in force two years. The President's decision was communicated to Minister Rush.<sup>13</sup>

In the summer of 1818 Albert Gallatin, American

<sup>12</sup> *Memoirs of J. Q. Adams*, IV., 146-149. Moore, *Digest of International Law*, II., 998.

<sup>13</sup> Adams to Rush, Dec. 1, 1818; *American State Papers*, For. Rel., IV., 401-402.

minister in Paris, had been requested by his Government to proceed to London and to join Minister Rush in the negotiation of a treaty with Great Britain. Gallatin reached London August 16, and on the 22d the first informal conference took place between the American ministers and the representatives of the British Government, who included Lord Castlereagh, Secretary of Foreign Affairs, and Goulburn and Robinson, specially appointed plenipotentiaries.

On August 27, 1818, the American and British plenipotentiaries held their first conference with respect to treaty arrangements. The British stated that they were ready at once to sign a treaty renewing the commercial convention of 1815, or if the American plenipotentiaries wished to discuss other topics, they were willing to delay the signing of the treaty; but they declared that their instructions did not allow them to consent to any partial or separate consideration of such topics "as an appendage to a renewal of the existing commercial convention." The American ministers expressed their unwillingness to sign the treaty renewal immediately.<sup>14</sup>

At the second conference, held August 29, the American ministers stated that whenever the British ministers were ready to submit their projet on the im-

<sup>14</sup> Protocol of the first conference between the American and British plenipotentiaries, Aug. 27, 1818; American State Papers, For. Rel., IV., 383.

pressment question they would bring forward their propositions respecting the other maritime points.<sup>15</sup> On September 17, the British commissioners presented a projet of six articles upon impressment. The scheme provided for the exclusion by each state of the natural-born subjects of the other from service in its public or private marine. This restriction was not to apply to natural-born subjects of either state naturalized by the other before the signing of the treaty. An enumeration of such persons as were thus exempt was to be made by each state and the list communicated to the other. It should be agreed that during the continuance of the treaty neither Power would impress or forcibly withdraw any person or persons from the vessels of the other upon the high seas. The treaty was to run for ten years, but might be abrogated at any time upon six months' notice.<sup>16</sup>

The American commissioners offered amendments to the British projet. Most of these were merely verbal changes; but two points, upon which insistence was made, proved sufficiently serious to break off the negotiation relative to impressment. Objections were raised to the article which required that the place of

<sup>15</sup> Protocol of the second conference between the American and British plenipotentiaries, Aug. 29, 1818; American State Papers, For. Rel., IV., 383.

<sup>16</sup> Protocol of the third conference between the American and British plenipotentiaries, Sept. 17, 1818; American State Papers, For. Rel., IV., 383-388.

birth and date of naturalization of all persons exempt from the exclusion law should be specified. To this the Americans objected because it would be impossible in every case to comply with such requirement, particularly as there was no national naturalization law prior to 1789, and minor children of naturalized persons were not required to take out papers to become American citizens. They proposed as a substitute that no natural-born subject or citizen of either Power whose name should not be included in the list should be deemed to fall within the exception unless he produced proof of his having been duly naturalized prior to the exchange of ratifications of the treaty.

The second important change proposed by the American commissioners was that which provided for the exemption from the law of persons naturalized by their respective laws "previous to the exchange of ratifications," instead of "previous to the signature," of the treaty, as the British had proposed. The British refused to acquiesce in the changes which the Americans offered, and the negotiation failed. Rush expressed the belief that, had Lord Castlereagh been present in London throughout the negotiations, a successful termination of the subject of impressment might have resulted. Impressment failing of settlement, all other subjects of a maritime nature were withdrawn from discussion. Rush found at this time that, in spite of the failure to make any arrangement



relative to impressment, public opinion, as expressed by the ship-owners of London and British naval officers, was steadily tending towards a change in British policy.<sup>17</sup>

In the convention relating to the slave trade which was agreed upon by the representatives of the United States and Great Britain in 1824, but later rejected by the two states, reservation was made that the right allowed with respect to the forcible seizure of slave vessels should not be construed to sanction the right of search and impressment.<sup>18</sup>

In May, 1826, the House of Representatives passed a resolution requesting the President to lay before the House "any information in his possession, touching the impressment of seamen, from on board American vessels on the high seas, or elsewhere, by the commanders of British or other foreign vessels or ships of war, since the 18th of February, 1815." The President, on January 15, 1827, communicated all the knowledge upon the subject in his possession, which embraced only two specific cases of alleged impressment, and these, as it subsequently appeared, were persons who voluntarily entered the British service and

<sup>17</sup> Protocol of the fourth conference between the American and the British plenipotentiaries, Sept. 25, 1818; American State Papers, For. Rel., IV., 388-390. Rush, Memoranda of a Residence at the Court of London (1833), 445-446.

<sup>18</sup> American State Papers, For. Rel., V., 321.

were transferred from an American to a British ship without any objections being interposed by the officer in charge of the American vessel.<sup>19</sup>

The United States continued sensitive upon the subject of impressment, although no actual cases of the practice can be discovered. In connection with certain alleged instances of impressment in 1828, Clay, Secretary of State, in a letter of January 26, 1829, addressed to the American minister to Great Britain said: "If these proceedings have had the sanction of the British Government, you will inform it that the American Government can not tolerate them; that, if persisted in, they will be opposed by the United States; and that the British Government must be answerable for all the consequences, whatever they may be, which may flow from perseverance in a practice utterly irreconcilable with the sovereign rights of the United States. If these proceedings have taken place without the sanction of the British Government, you will demand the punishment of the several British naval officers at whose instance they occurred, and the immediate adoption of efficacious measures to guard the navigation of the United States against the occurrence of similar irregularities."<sup>20</sup>

<sup>19</sup> Congressional Debates, Vol. II., Part II., 2666. Richardson, Messages and Papers of the Presidents, II., 368.

<sup>20</sup> Clay to Barbour, Jan. 26, 1829; MS., Inst. U. S. Ministers, XII., 186. Quoted in Moore, Digest of International Law, II., 998-999.

When Webster and Lord Ashburton entered into negotiations to settle various differences between their respective states, impressment was one of the subjects upon which they exchanged notes. In a note of August 8, 1842, addressed by Webster to Lord Ashburton, the American Secretary discussed the history of impressment and the general principles upon which it was founded. He declared that the Government of the United States had reflected on the past; had pondered upon the condition of the present; and had endeavored to anticipate, as far as was within its power, the probable future; and that the result of such deliberation was that the American Government was "prepared to say, that the practice of impressing seamen from American vessels cannot be hereafter allowed to take place. That practice is founded on principles which it does not recognise, and is invariably attended by consequences so unjust, so injurious, and of such formidable magnitude as cannot be submitted to." He declared that the only rule which could be "adopted and observed, consistently with the rights and honor of the United States and the security of their citizens," was that the nationality of the vessel should protect the seamen on board. This was announced to be the principle that hereafter would be maintained by the American Government. Webster so upheld the contention of the United States that the right of search by one nation of the vessels of another

for the purpose of impressment was contrary to the law of nations. He said: "Every merchant vessel on the seas is rightfully considered as part of the territory of the country to which it belongs. The entry, therefore, into such vessel, being neutral, by a belligerent, is an act of force, and is *prima facie*, a wrong, a trespass, which can be justified only when done for some purpose, allowed to form a sufficient justification by the law of nations. But a British cruiser enters an American merchant vessel in order to take therefrom supposed British subjects; offering no justification therefor, under the law of nations, but claiming the right under the law of England respecting the king's prerogative. This cannot be defended. English soil, English territory, English jurisdiction is the appropriate sphere for the operation of English law; the ocean is the sphere and any merchant vessel on the seas is, by that law, under the protection of the laws of her own nation, and may claim immunity, unless in cases in which that law allows her to be entered or visited."<sup>21</sup>

Lord Ashburton in reply stated that the object of his mission had been to settle existing subjects of difference; that no differences on the subject of impressment had arisen within recent years because the practice had, since the war, wholly ceased and could not, consistently with existing laws and regulations for

<sup>21</sup> Webster to Ashburton, Aug. 8, 1842; *Niles' Register*, LXIII., 62-63.

manning her Majesty's navy and under the present circumstances, be renewed. He admitted the desirability of coming to some agreement in time of peace upon the principles underlying impressment in order to remove all apprehension and anxiety as to the future. He promised to transmit Webster's note to the British Government that it might receive proper attention.<sup>22</sup>

When transmitting the Webster-Ashburton treaty to the Senate, August 11, 1842, President Tyler also sent with it the correspondence between the negotiators on the subject of impressment. In his message accompanying the documents he said: "The impressment of seamen from merchant vessels of this country by British cruisers, although not practiced in time of peace, and therefore not at present a productive cause of difference and irritation, has, nevertheless, hitherto been so prominent a topic of controversy and is so likely to bring on renewed contentions at the first breaking out of a European war that it has been thought the part of wisdom now to take it into serious and earnest consideration. The letter from the Secretary of State to the British minister explains the ground which the Government has assumed and the principles which it means to uphold. For the defense of these grounds and the maintenance of these principles the most perfect reliance is placed on the in-

<sup>22</sup> Ashburton to Webster, Aug. 9, 1842; Niles' Register, LXIII., 63.

telligence of the American people and on their firmness and patriotism in whatever touches the honor of the country or its great and essential interests.”<sup>23</sup>

The protest made by the British Government against the seizure of Mason and Slidell on the British steamer *Trent* in the Civil War has been held to denote an abandonment on the part of England of a right to take from neutral vessels, on any pretext whatever, persons “not within the conceded exception of military persons in the actual service of the enemy.”<sup>24</sup>

The doctrine of inalienable allegiance, upon which the alleged right of impressment was founded, was abandoned by Great Britain in 1870 when Parliament passed a naturalization act which conceded the right of voluntary expatriation and recognized the efficacy of the naturalization laws of foreign states to change the status of former subjects of Great Britain. This law removed what, heretofore, had proved an insuperable obstacle to any agreement between the United States and Great Britain upon legislation which should mutually protect the interests of both states.

The United States Navy Regulations (ed. 1896, par. 410) contain the following provision: “Commanders of public vessels of war are not to suffer their vessels

<sup>23</sup> Richardson, Messages and Papers of the Presidents, IV., 169.

<sup>24</sup> Lawrence's Wheaton (1863), 217-218. Quoted in Moore, Digest of International Law, II., 1001.

to be searched by any foreign power under any pretext, nor any officers or men to be taken out, so long as they have power of resistance. If force be used, resistance must be continued as long as possible. If overcome, they are to yield their vessel, but not their men without the vessel."<sup>25</sup>

The second important subject included in the causes of the war, and upon which the American peace commissioners were instructed to secure a satisfactory arrangement, was blockade. They were instructed to secure an agreement upon a precise definition of legal blockade. Such a definition, it was maintained by the American Government, should include previous warning to vessels sailing to the blockaded ports and the maintenance of the blockade by a force sufficient to render hazardous any attempt to enter. The commissioners, however, found it necessary to abandon maritime questions in the discussion of the peace treaty and of the later commercial treaty. Great Britain admitted the validity of the contention that a blockade to be binding must be maintained by an effective force, but she claimed that the blockade established by the order in council of May, 1806, was efficiently maintained, and that the later order of November, 1807, was a necessary act of retaliation against the enemy. The Berlin and Milan decrees were likewise claimed by

<sup>25</sup> Quoted in Davis, *Elements of International Law* (ed. 1908), 499-500 (footnote).

Napoleon to be retaliatory acts against Great Britain to punish her for a violation of the law of nations.

In 1816 the United States had occasion to restate its position concerning blockade. When notified by the Spanish minister at Washington of a declaration of the blockade of "the ports of the Viceroyalty of Santa Fe," the American minister in Madrid was instructed to advise the Government of Spain "that 'a blockade, to be acknowledged as valid by the United States, must be confined to particular ports, each having a force *stationed* before it sufficient to intercept the entry of vessels; and no vessel shall be seized, even in attempting to enter a port so blockaded, till she has been previously warned away from that port.'" Again in 1825 and 1826, in connection with certain blockades established by Brazil, the American Government, through diplomatic channels, pressed its position upon the Brazilian Government, particularly that part which called for notifications to be given to each vessel attempting to enter the blockaded ports.<sup>26</sup> In 1846, when the United States established a blockade of the west coast of Mexico, Buchanan, Secretary of State, wrote Pakenham, the British minister, to assure him that there was no intention of setting up a paper blockade, since this would be unwarranted by the principles which the United States had maintained in re-

<sup>26</sup> Raguet to Minister of Foreign Affairs of Brazil, Dec. 13, 1825; American State Papers, For. Rel., VI., 1023-1025.



gard to blockades ever since it became an independent nation. In order to insure consistency in the American position the commanding officers of the United States Navy in the Pacific were informed by Mason, Secretary of the Navy, that "a lawful maritime blockade requires the actual presence of a sufficient force stationed at the entrance of the ports sufficiently near to prevent communication. The only exception to this rule, which requires the actual presence of an adequate force to constitute a lawful blockade, arises out of the circumstance of the occasional temporary absence of the blockading squadron, produced by accident, as in the case of a storm, which does not suspend the legal operation of a blockade."<sup>27</sup>

Paper blockades, against which the United States protested, were placed under the ban by the Declaration of Paris in 1856. Article 4 of that convention adopted the proposition that "blockades in order to be binding, must be effective; that is to say, maintained by a force sufficient really to prohibit access to the enemy's coast." This was agreed to by seven states, namely, Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey. In the second Hague Peace Conference in 1907<sup>28</sup> an attempt was made to secure the adhesion of the participating Powers to the prin-

<sup>27</sup> Moore, *Digest of International Law*, VII., 790-791.

<sup>28</sup> Scott, *The Hague Peace Conferences of 1899-1907*, I., 721-725.

principle laid down in the Declaration of Paris and to define more strictly the meaning of "effective" blockade, proper notification, and circumstances of violation. The discussions in the conference disclosed the fact that there were two practices in the matter of notification of blockade, the Anglo-American and the Continental. As it seemed that agreement was impossible at that time, the subject was dropped; but a proposition was adopted providing for the establishment of an International Prize Court which should apply the rules of international law. In order to come to an agreement upon some of the important rules which such a Prize Court would be obliged to apply, the London Naval Conference of 1909 was convened. The subject of blockade was one of the matters definitely included in the Declaration of London, which was the result of that conference. By this international agreement the Declaration of Paris was adopted in relation to the definition of blockade, and the question of effectiveness of blockade was declared to be a matter of fact; declaration of blockade must include the date when it began, the limits included, and the period within which neutral vessels may come out; notification must be given to the Governments of the neutral states and to the local authorities by the officer commanding the blockading force.

The subject of disarmament on the Great Lakes, which was brought into the discussions at Ghent

through the insistence by the British commissioners that the United States dismantle its forts and withdraw its vessels from the lakes, had a happy sequel in the subsequent arrangement for the limitation of the naval forces of both countries upon the boundary waters.

Shortly after the treaty of Ghent was signed, the British Government issued orders for the increase of their naval force upon the lakes. The American Government conceived it to be unwise to enter into a rival policy of naval increase, and accordingly instructed its minister at London to propose to the British Government such an arrangement respecting the naval force to be kept on the lakes by both Governments as would demonstrate their pacific policy and secure their peace. It was suggested that this might be done by limiting the size and number of armed vessels to be kept by each nation upon the lakes, or by abstaining altogether from keeping an armed force there beyond that used for the revenue service.<sup>29</sup>

Adams presented this proffer of the American Government to Lord Castlereagh, who was unwilling to accede to it on the ground that a mutual stipulation against armament on the lakes would, because of the advantage of position of the United States, be unequal

<sup>29</sup> Monroe to Adams, Nov. 16, 1815; MS., Inst. U. S. Ministers, VIII., 3; 56th Cong., 1st sess., H. Doc. 471; Moore, Digest of International Law, I., 691-692.

and disadvantageous in its operation to Great Britain in time of war. On March 21, Adams renewed the proposal to "mutually and equally disarm upon the American lakes." He expressed the hope that the offer might be received in the same friendly spirit in which it was made, and "he emphasized the fact that there were abundant securities against the possibility of any sudden attack upon the colonies which the 'guarded and cautious policy' of Great Britain might fear."<sup>30</sup>

Great Britain, however, apprehensive of another war with the United States, and accepting the opinion of Wellington and other experts that the control of the lakes would determine the ultimate issue of any such war, was disposed to continue her policy of preparation for future contingencies. Both in Great Britain and America there was a strong element which urged the policy of preserving peace by being prepared for war. Goulburn, one of the British commissioners at Ghent, wrote Clay as follows: "You are fighting the same battle in America that we are here, i. e., putting peace establishments on a footing not unbecoming the growth of population and empire in which they are to be maintained. It is impossible that either country

<sup>30</sup> Callahan, *The Neutrality of the American Lakes*, 69; Johns Hopkins University Studies in Historical and Political Science, ser. XVI., nos. 1-4. Moore, *Digest of International Law*, I., 692.

should feel jealous of the other so long as the augmentation does not exceed the necessity of the case, and I have not heard an argument anywhere to prove that it does so exceed in either case. I can relieve your apprehensions as to the hostile movement of England in any part of the globe." Adams, who followed with greatest anxiety the discussions in Parliament in connection with the military and naval establishment, was apprehensive that the augmentation of equipment foreshadowed war. In a letter to Monroe on March 30 he wrote: "In all the late debates in Parliament upon what they call their Military and Naval *Peace* Establishment the prospect of a new war with the United States has been distinctly held up by the ministers and admitted by the opposition as a solid reason for enormous and unparalleled expenditure and preparation in Canada and Nova Scotia. We hear nothing now about the five fir frigates and the bits of striped bunting. The strain is in a higher mood. Lord Castlereagh talks of the great and growing military power of the United States. The Marquis of Lansdowne, an opposition leader and one of the loudest trumpeters for retrenchment and economy, still commends the ministers for having been *beaten* into the policy of having naval superiority upon the lakes. And one of the lords of the admiralty told the House of Commons last Monday that bumboat expeditions and pinchbeck administrations would do no longer for Canada; that

Englishmen must lay their account for fighting battles in fleets of three-deckers on the North American lakes. All this is upon the principle of preserving peace by being prepared for war. But it shows to demonstration what will be the fate of the proposal for disarming."<sup>31</sup>

Adams had argued against the policy of armament on the lakes that, besides the expense, the tendency would be to arouse suspicion and ill-will between the peoples of both nations. He believed that the "moral and political tendency of such a system must be to war and not to peace." He felt, under the circumstances, that there was very little likelihood of the acceptance of the proposal which he had made to the British Government. However, a few weeks later, Adams was happily surprised when he was informed by Lord Castlereagh that the British Government were ready to meet the proposal of the United States, "so far as to avoid everything like a contention between the two parties which should have the strongest force" on the lakes, and that they did not desire to keep any vessels in commission or in active service except those needed "to convey troops, occasionally." Adams did not feel himself properly instructed to conclude a treaty upon the subject, and so it was agreed that the negotiations should be transferred to Washington. Accordingly, instructions were sent to Charles Bagot, the British

<sup>31</sup> Callahan, *Neutrality of the American Lakes*, 70-71.

minister to the United States, who was given power to act with reference to armament on the lakes, and also in the matter of the fisheries.<sup>32</sup>

The formal opening of negotiations in Washington began when, on July 26, Bagot sent a note to Monroe informing him that the British Government were prepared to "cheerfully adopt" any reasonable system in connection with the naval armament on the lakes which would diminish the expenses, reduce the chance of collision, and prevent jealousy between the two countries. He requested information as to the specific arrangements proposed by the American Government.<sup>33</sup>

Secretary Monroe replied, August 2, that the Administration was willing, "in the spirit of the peace which so happily exists between the two nations, and until the proposed arrangement shall be cancelled, . . . to confine the naval force to be maintained on the lakes, on each side, to the following vessels; that is, on Lake Ontario, to one vessel not exceeding one hundred tons burden, and one eighteen-pound cannon; and on the upper lakes, to two vessels of like burden and force; and on the waters of Lake Champlain, to one vessel not exceeding the like burden and force; and that all other armed vessels on those lakes shall be forthwith dismantled; and, likewise, that neither party

<sup>32</sup> Callahan, *Neutrality of the American Lakes*, 71-73.

<sup>33</sup> Bagot to Monroe, July 26, 1816; *American State Papers*, For. Rel., IV., 203.

shall build or arm any other vessel on the shores of those lakes." It was further provided that the naval force thus retained by each party on the lakes should be restricted in its duty to the protection of its revenue laws, the transportation of troops and goods, and to such other services as would not in any way interfere with the armed vessels of the other party.<sup>34</sup>

The British minister, while conceiving it necessary to transmit to his Government the project put forth by the American Government, informed Monroe that he was prepared to suspend immediately the further construction and equipment of armed vessels upon the lakes pending the outcome of the negotiations.<sup>35</sup> Monroe then sought to secure a provisional agreement of the project presented by him; but the British minister expressed his inability to subscribe, even provisionally, to any precise agreement as to the exact manner in which the respective naval forces upon the lakes should be limited.<sup>36</sup> Monroe then accepted Bagot's offer to suspend further augmentation of the naval armament until the British Government should make their reply to the American project.

It was not until the spring of the following year,

<sup>34</sup> Monroe to Bagot, Aug. 2, 1816; American State Papers, For. Rel., IV., 203.

<sup>35</sup> Bagot to Monroe, Aug. 6, 1816; American State Papers, For. Rel., IV., 203-204.

<sup>36</sup> Bagot to Monroe, Aug. 13, 1816; American State Papers, For. Rel., IV., 204.



after Monroe had become President, that the actual reduction of the armament on the lakes took place. On April 28, 1817, Bagot informed Rush, then Acting Secretary of State, that the British Government had consented to reduce the naval armament upon the American lakes in the manner proposed by the American Government.<sup>37</sup> Rush, in acknowledging the receipt of the British note, reciprocally pledged his Government to the acceptance of the project.<sup>38</sup> It was agreed that the stipulation should remain in force until six months after either party should have given notice to the other of its desire to terminate it.

Orders were immediately issued by both Governments for carrying out the arrangement. Not until a year later, April 6, 1818, was the convention communicated to the Senate. It was ratified by the Senate on April 16, and proclaimed by the President on the 28th. No exchange of ratifications occurred. The operation of the convention was made effective through executive order from the date of the original exchange of notes.<sup>39</sup>

This arrangement for mutual disarmament on the

<sup>37</sup> Bagot to Rush, April 28, 1817; American State Papers, For. Rel., IV., 205-206.

<sup>38</sup> Rush to Bagot, April 29, 1817; American State Papers, For. Rel., IV., 206.

<sup>39</sup> American State Papers, For. Rel., IV., 202; 56th Cong., 1st sess., S. Doc. 301; 56th Cong., 1st sess., H. Doc. 471, 15; Moore, Digest of International Law, I., 692.

lakes has undoubtedly been the greatest single factor in the continuance of peaceful relations between the United States and Great Britain during the last one hundred years.

A fourth subject which was earnestly discussed in the peace negotiations was the northeastern fisheries. This question remained open for nearly a century after the treaty of Ghent was signed, and was the occasion of a very large number of specific negotiations.

The British commissioners at Ghent took the position that the fishing privileges had become abrogated by the war, and they refused to renew them to the United States except for an equivalent. The American commissioners held that the fishing "privileges," or "rights," as they preferred to consider them, were unaffected by the war since they were not granted by the treaty of 1783, but had been recognized by that treaty as belonging to the United States along with its independence.<sup>40</sup> They did, however, offer, by a divided vote, to grant to the British a renewal of the privilege of the navigation of the Mississippi in return for the renewal of the rights to the fisheries. They also offered to sign a treaty omitting both subjects. The last proposition was the one finally accepted by the British commissioners. They thought that by drawing from the Americans the proposition to ex-

<sup>40</sup> Extracts of letter from American Commissioners to British Commissioners; Monroe Papers, MS., XIV., 1810.

change the one privilege for the other they had gained, practically, the admission that the fishing privilege needed renewal to render it effective.<sup>41</sup> Nevertheless, the American commissioners argued so adroitly that the British were able to make little use of the American proposal as an argument against the claim of the American commissioners. The alternative proposal of the American commissioners to drop the question altogether having been accepted by the British, the question of the fisheries was thus left subject to the interpretation of each state.

When explaining to their Government their conduct with reference to the proposal to exchange the Mississippi privilege for that of the fisheries, the American commissioners stated that they regarded both subjects as unaffected by the war; that when the British asked for the navigation of the Mississippi as a new claim, they had refused to grant it without an equivalent; that if the request were made by Great Britain because it had been granted in 1783, then the claim of the United States to the liberty of the fisheries must be recognized; that, "to place both points beyond all future controversy," the proposal to confirm both rights by treaty provisions had been presented by a majority of the mission. A proof that they considered the fishing privilege to stand on the same basis as before the war

<sup>41</sup> Goulburn to Bathurst, Dec. 10, 1814; Wellington's Supplementary Despatches, IX., 471-472.

was the fact that they had rejected the proposal of the British commissioners to refer both questions, the fisheries and the Mississippi, to future negotiations, although the acceptance of that proposition would have secured the 49th parallel as the boundary west of the Lake of the Woods.<sup>42</sup>

The fact that in the negotiations at Ghent the treaty of 1783 had been referred to, and that in the treaty of Ghent provision had been made to carry out stipulations as to the boundaries laid out by the treaty of 1783, was taken to prove that this treaty was still in force and, if in force in part, must be in force in its entirety. So the argument ran.<sup>43</sup>

When plans were maturing for a commercial treaty, Adams attempted to secure the confirmation of the fishing privileges in that treaty in order to avoid future conflicts between the two states. The British Government refused to grant such confirmation, much to the displeasure of Adams, who in a letter to Monroe wrote: "It is impossible for me to express in terms too strong or explicit my conviction that nothing can maintain the rights of the people of the United States in the American fisheries but the determined and inflexible resolu-

<sup>42</sup> American Plenipotentiaries to Monroe, Dec. 25, 1814; American State Papers, For. Rel., III., 732-733.

<sup>43</sup> Floyd to President Monroe, March 8, 1815; Russell Papers, MS., No. 1119. Article from Canadian Courant; British Foreign Office, 5, 106. Adams to Bathurst, Sept. 25, 1815; MS., British Foreign Office, 5, 106.

tion of themselves and the Government to maintain them at every hazard."<sup>44</sup> Adams continued a vigorous correspondence with Lord Bathurst over the subject, but secured no assurance of any new arrangement.

In the summer of 1818 Richard Rush and Albert Gallatin were appointed to negotiate for the renewal of the commercial convention between Great Britain and the United States, which would expire by limitation the next year. They secured this object in a convention signed October 20, 1818. In addition to providing for the continuance of the former convention for a period of ten years, the treaty embraced articles upon the settlement of the northwestern boundary; an arrangement with reference to the Columbia River and joint occupation of the northwest coast; reference of the indemnity claims for slaves to a friendly Power; and the renewal of the fishing liberty with some curtailment from that granted by the treaty of 1783.

The treaty of 1818 granted the liberty to the inhabitants of the United States "forever" to "take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands on the shores of the Magdalen Islands,

<sup>44</sup> J. Q. Adams to Monroe, Sept. 5, 1815; Bureau of Indexes and Archives, British notes, 19, No. 12.

and also on the coasts, bays, harbors, and creeks from Mount Joly on the southern coast of Labrador, to and through the streights of Belleisle and thence northwardly indefinitely along the coast." American fishermen were allowed "to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador." as long as such territory should be unsettled. The United States renounced for its fishermen any right "to take, dry, or cure fish on, or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the above mentioned limits; Provided however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."<sup>45</sup>

The treaty of 1783 had stated the privilege with respect to the fisheries within British jurisdiction in this way: "The inhabitants of the United States shall

<sup>45</sup> Hertslet, *Treaties and Conventions between Great Britain and Foreign Powers*, V., 392 et seq. Malloy, *Treaties and Conventions*, I., 631-633.

have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island) and also on the coasts, bays and creeks of all other of His Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlements, without a previous agreement for that purpose with the inhabitants, proprietors or possessors of the ground."<sup>46</sup>

It will be noted that by the provisions of the treaty of 1818 the territory within which Americans might fish was greatly curtailed, and the privilege of drying and curing fish within British territory was practically withdrawn. The American fishermen petitioning that they be granted the privilege of the inshore fisheries, the right to which had been renounced in the convention of 1818, the question again became the subject of negotiation. A reciprocity treaty for the temporary adjustment of the subject was signed at Washington, June 5, 1854. The negotiators were William L. Marcy, Secretary of State of the United States, and Lord Elgin, special plenipotentiary of Great Britain. By

<sup>46</sup> Malloy, *Treaties and Conventions*, I., 588.

the provisions of this treaty American fishermen were again admitted to the inshore fisheries as described in the treaty of 1783, and the British fishermen were admitted to the inshore fisheries on the eastern coast of the United States north of the 36th parallel of north latitude. In each case it was expressly declared that the "liberty" applied to sea fisheries, and that "the salmon and shad fisheries and all fisheries in rivers and the mouths of rivers" were reserved to each country exclusively for its own fishermen.<sup>47</sup> It was provided that this reciprocal arrangement might be terminated by either party on twelve months' notice.

This treaty was terminated in the year 1864 by an act of Congress. The fishing rights reverted again to the treaty arrangements of 1818. Between 1864 and 1871 a system of licenses was adopted by the Canadian Government granting American fishermen the right to fish in waters from which they were excluded by the treaty of 1818. In 1869 the Canadian Government enacted exclusive laws against American fishermen forcing them to keep outside the three mile limit.<sup>48</sup>

Conflicts arising between the fishermen of Newfoundland and the United States, negotiations were

<sup>47</sup> Malloy, *Treaties and Conventions*, I., 668-672. Moore, *Digest of International Law*, I., 791-792.

<sup>48</sup> Correspondence respecting the Newfoundland fisheries; *Parliamentary Papers*, U. S., No. 1, Speech by Sir R. Bond, 58.



again renewed which resulted in the so-called treaty of Washington, which was signed May 8, 1871. It was stipulated that this treaty should continue for ten years or until terminated by twelve months' notice by either state.<sup>49</sup> By this treaty American fishermen were again allowed the privilege of the inshore fisheries in the waters of British North America. In return for that privilege the markets of the United States were opened to the fishery products of Newfoundland and Nova Scotia. This treaty was terminated by the American Government, July 1, 1885. Once again the fishing privilege reverted to the basis of the treaty of 1818, and a *modus vivendi* was entered upon.<sup>50</sup>

In 1888 Great Britain attempted to negotiate another reciprocity treaty. These negotiations resulted in what is known as the Bayard-Chamberlain treaty. This was signed February 5, 1888, but was subsequently rejected by the Senate. In the year 1890 the Government of Newfoundland, with the permission of Great Britain, entered upon direct negotiations with the United States. As a result an agreement, which has been called the Bond-Blaine convention, was reached. This arrangement, similar to the unratified treaty of 1888, provided, in exchange for the fishing privilege, that the fishing products and crude copper ores of Newfoundland should be admitted free into the United

<sup>49</sup> Malloy, *Treaties and Conventions*, I., 700 et seq.

<sup>50</sup> Moore, *Digest of International Law*, I., 808-809.

States. The Dominion of Canada objected to the arrangement, and the convention was never submitted to Great Britain, out of deference to the wishes of Canada. Attempts were again made in 1898 by Great Britain to bring about a reciprocal trade treaty, but these also failed.<sup>51</sup>

In 1902, as a result of a long series of negotiations, a convention known as the Hay-Bond treaty was signed. This treaty was made upon the same lines as those of 1888 and 1890. It was opposed by the fishing interests of Massachusetts, and, after being before the Senate for three years, it was finally rejected. From October 12, 1905, to October 6, 1906, an extended correspondence was carried on between the Department of State and the British Foreign Office over the fishing privileges. This resulted in an agreement upon a new *modus vivendi*, which was ratified by the American Government, October 6, 1906.<sup>52</sup> By the terms of this agreement the Newfoundland Foreign Fishing Vessels Act of 1906, which imposed certain restrictions upon American fishing vessels, and parts of an act of the previous year against which American fishermen had complained, were not to be enforced against American fishing vessels. The use of purse seines by the American

<sup>51</sup> Correspondence respecting the Newfoundland fisheries; Parliamentary Papers, U. S., No. 1, Speech by Sir R. Bond, 59.

<sup>52</sup> Correspondence respecting the Newfoundland fisheries; Parliamentary Papers, U. S., No. 1, Whitelaw Reid to Sir Edward Grey, Oct. 6, 1906, 42 et seq.

fishermen, which had been prohibited by law, was now allowed during the ensuing season; and the "shipment of Newfoundlanders by American fishermen outside the three mile limit was not to be made the basis of interference or to be penalized."<sup>53</sup>

On April 4, 1908, the United States and Great Britain concluded a general arbitration treaty. Acting under this treaty, the two countries signed a special agreement on January 27, 1909, which was formally ratified by both Governments, March 4, 1909, to submit to the International Court of Arbitration at The Hague the settlement of certain questions growing out of the fisheries controversy. The United States maintained that its rights to the Newfoundland fisheries were based upon the treaty of 1818, which had never been abrogated, and that the Government of Newfoundland in the passage of restrictive laws had infringed upon privileges guaranteed under that treaty.<sup>54</sup>

The Hague tribunal was, in particular, called upon to decide seven distinct points: One, had the Government of Newfoundland the right to restrict the American fishery rights in Newfoundland by its own laws, without the consent of the United States; two, might American fishing vessels while exercising their fishing

<sup>53</sup> Correspondence respecting the Newfoundland fisheries; Parliamentary Papers, U. S., No. 1, Whitelaw Reid to Sir Edward Grey, Oct. 6, 1906, 42 et seq.

<sup>54</sup> Proceedings in the North Atlantic Coast Fisheries Arbitration; 61st Cong., 3d sess., S. Doc. 870, Vol. VIII., 10-11.

privileges be prohibited from employing as members of their crews persons who were not inhabitants of the United States; three, might the inhabitants of the United States be subjected, without the consent of the United States, to the requirements of entry or report at custom-houses, or the payment of light or harbor or other dues, or any other similar requirements or conditions or exactions; four, might restrictions be imposed upon American fishermen, making the exercise of the privileges granted them by the treaty of entering certain bays and harbors for shelter, repairs, wood, or water, conditional upon the payment of light or harbor or other dues, or entering or reporting at custom-houses, or any similar conditions; five, from what point should the three mile limit be measured in the case of bays which were more than three miles wide, from a line drawn from promontory to promontory, or from a line paralleling all irregularities of the coast; six, did the treaty of 1818 give the inhabitants of the United States the same liberty to take fish in the bays, harbors, and creeks of Newfoundland as of Labrador; seven, were the fishermen of the United States to have for their vessels, when duly authorized by the United States in their behalf, the commercial privileges on the treaty coasts accorded by agreement or otherwise to United States trading vessels generally.<sup>55</sup>

<sup>55</sup> Proceedings in the North Atlantic Coast Fisheries Arbitration; 61st Cong., 3d sess., S. Doc. 870, Vol. VIII., 13, 87, 97, 113, 117, 225, 257.

Of the seven points discussed five were decided in favor of the United States and two in favor of Great Britain. The two questions interpreted favorably to Great Britain, or rather to Newfoundland, were the first and the fifth. By the decision relative to the first, Newfoundland was allowed to make reasonable regulations of the fisheries, such as determining the time during which and the methods by which fishing might be carried on along her coasts. The decision of the Arbitration Court upon the fifth question construed the three mile limit to be from a line drawn from headland to headland and not from the coast indentations of the bays. The decision upon all points has justified the wisdom of the creation of the Permanent Court of Arbitration, for not only was a most vexed question of long standing settled, but settled in such a fair manner that the United States, Great Britain, Canada, and Newfoundland were all satisfied. The award was made September 7, 1910. The court in connection with its decision recommended the adoption by the United States and Great Britain of certain rules and methods of procedure under which all questions that might arise in the future with reference to the exercise of the liberties referred to in Article I of the treaty of 1818 might be settled in accordance with the principles laid down in the award. On July 20, 1912, representatives of the two countries signed an agreement which provided for the publication of laws, ordin-

ances, or rules for the regulation of the fisheries, and for the creation of a Permanent Mixed Fishery Commission of three, which should decide upon the reasonableness of future regulations. This treaty also gave effect to the decision of the Court of Arbitration relative to bays by providing that the rule established by the said court should apply in all bays where the width of the entrance did not exceed ten miles. Ratifications over this convention were exchanged November 15, 1912, and it was proclaimed by the President November 16, 1912.<sup>56</sup>

With the establishment of the Permanent Mixed Fishery Commission it is believed that all future disputes over the fishing privileges will find speedy adjustment. This commission and the recently established International Boundary Commission illustrate a tendency toward permanent commissions to deal with questions as they arise, in place of special and temporary commissions called into existence after differences have been augmented through a period of years. With permanent commissions of the character mentioned, with arbitration treaties, and the Permanent Court of Arbitration at The Hague, the prospects for continued peace with Great Britain are far more assuring than they were when the commissioners signed the treaty of Ghent one hundred years ago.

<sup>56</sup> Proceedings in the North Atlantic Coast Fisheries Arbitration; 61st Cong., 3d sess., S. Doc. 870, Vol. XII., 2376-2380.

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